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Customs Service

19 CFR Part 7, et al.
Drawback; Final Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PARTS 7, 10, 145, 173, 174, 178, 181, 191

[T.D. 98–16]

RIN 1515–AB95

Drawback

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document revises the Customs Regulations regarding drawback. The document revises the regulations to implement the extensive and significant changes to the drawback law contained in the Customs modernization portion of the North American Free Trade Agreement Implementation Act; to change some administrative procedures involving manufacturing and unused merchandise drawback, for the purpose of expediting the filing and processing of drawback claims thereunder, while maintaining effective Customs enforcement and control over the drawback program; and to generally simplify and improve the editorial clarity of the regulations.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Operational aspects: Maryanne Carney, Chief, Drawback and Records Branch, New York, (212–466–4575).

Legal aspects: Paul Hegland, Office of Regulations and Rulings, (202–927–1172).

SUPPLEMENTARY INFORMATION:

Background

Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law, including manufacturing and unused merchandise drawback. The statute providing for specific types of drawback is 19 U.S.C. 1313, the implementing regulations for which are contained in part 191, Customs Regulations (19 CFR part 191).

The North American Free Trade Agreement Implementation Act, Public Law 103–182 (December 8, 1993), specifically Title VI thereof, popularly known as the Customs Modernization Act, significantly amended certain Customs laws. In particular, § 632 of Title VI effected extensive and major amendments to the drawback law, 19 U.S.C. 1313. Also, § 622 of Title VI authorized the establishment of a ''Drawback Compliance Program'' as well as specific civil monetary penalties for false drawback claims.

Public Law 103–182 also approved and implemented the North American Free Trade Agreement (NAFTA). Section 203 of the Public Law provides special drawback provisions for exports to NAFTA countries. NAFTA drawback is separately provided for in part 181 of the Customs Regulations (19 CFR part 181). Drawback and other duty-deferral programs are addressed in subpart E of part 181. General drawback provisions under part 191 and the NAFTA drawback regulations in part 181 contain substantial differences (*e.g.*, the ''lesser of'' calculation versus full drawback, same condition versus unused merchandise drawback, etc.) Separate claims are required for drawback claims governed by NAFTA (see 19 CFR 181.46 and 191.0a).

By a document published in the **Federal Register** on January 21, 1997 (62 FR 3082), Customs proposed regulatory revisions principally to part 191 in implementation of the statutory changes. In addition, the document proposed to generally rearrange and revise part 191 largely in an effort to further simplify and improve the editorial clarity of those regulatory procedures primarily dealing with the manufacturing and unused merchandise provisions, these being the most commonly used types of drawback. Several administrative changes were proposed as well with respect to the regulatory procedures governing these provisions, for the purpose of expediting the filing and processing of drawback claims thereunder, while ensuring that Customs has the necessary enforcement information to maintain effective administrative oversight over the drawback program. Also, minor conforming changes occasioned by the general reorganization of part 191 were proposed with respect to other parts of the Customs Regulations (19 CFR parts 7, 10, 145, 173, 174 and 181).

In formulating the notice of proposed rulemaking, as noted therein, Customs consulted extensively with the drawback trade community. In particular, in the summer of 1995, Customs initiated informal rulemaking consultations in a series of meetings with various trade groups.

Numerous comments from the public were received in response to the publication of the notice of proposed rulemaking. A description, together with Customs analysis, of the comments that were submitted is set forth below.

Discussion of Comments

General

Comment: Many views were expressed about the process of informal consultations that were effected through a series of meetings initiated by Customs with various trade groups, most of these commenters variously observing that this process was instrumental and effective in assisting Customs in the preparation of a notice of proposed rulemaking which would fairly and accurately implement the drawback and related laws, and their underlying Congressional intent, as well as better reflect current industry practices and expectations.

Customs Response: Customs agrees that this final rule, based on the notice of proposed rulemaking which was developed through the innovative process described, correctly reflects the intent of the drawback law, as well as current industry concerns, and will improve drawback processing efficiency.

Comment: It was stated that the paperwork burden which would be generated by the proposed regulations was underestimated, due in part to the need to obtain certification in the drawback compliance program, and to provide Harmonized Tariff Schedule numbers in certain instances.

Customs Response: It should be noted that the information collection and recordkeeping burden in question contained in the proposed rule represents an estimated average annual burden. Customs, in accordance with the Paperwork Reduction Act of 1995, periodically reviews the accuracy of the information collection estimates required for compliance with its regulatory provisions. In the course of such review, changes to an estimated information collection burden will be made as appropriate.

Comment: The concern was expressed about the new Customs Forms that would be issued for drawback; it was asked that Customs work closely with the trade in the development of such forms, with one comment suggesting that the forms be finalized and included in the final drawback regulations herein.

Customs Response: Customs has worked closely with the public in developing new Customs Forms for drawback. The new drawback forms are: ''Drawback Entry'' (Customs Form 7551), ''Delivery Certificate for Purposes of Drawback'' (Customs Form 7552), and ''Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback'' (Customs Form 7553). The titles and numbers of the new forms are inserted where appropriate in the regulations.

Comment: Questions were raised about the nature and intent underlying the information contained in the

''BACKGROUND'' section of the proposed rule.

Customs Response: The ''BACKGROUND'' section of a rulemaking document presents its regulatory history. The information in this section is intended to give the specific detail necessary to explain the basis and purpose of the subject regulatory provisions and to furnish adequate notice of the issues to be commented on, as required by the Administrative Procedure Act. This enables a reviewing body, such as a court of law, to be aware of the legal and factual framework underlying an agency's action (see, *e.g., American Standard, Inc.,* v. *United States,* 602 F. 2d 256, 269 (Ct. Cl. 1979)).

Comment: A comment noted that some general drawback contracts were not included in Appendix A to part 191 in the proposed rule, along with the other general contracts.

Customs Response: The comment has merit. Four of the general manufacturing drawback rulings, as they are now considered, specifically T.D.s 83–53, 83–77, 83–80, and 83–84, were inadvertently omitted from Appendix A. They are now included therein. Also, T.D. 84–49, which required Customs Headquarters approval to obtain petroleum drawback under 19 U.S.C. 1313(b), was thus included in Appendix B as ''Format for 1313(b) Petroleum Drawback Application''. However, T.D. 84–49 is now included among the general manufacturing drawback rulings for which a letter of notification of intent to operate must be submitted to a drawback field office.

Comment: A statement was desired in the ''BACKGROUND'' section of the final rule that certain existing rulings concerning what constituted a manufacture or production for drawback purposes would remain in effect.

Customs Response: No change as to what constitutes a manufacture or production is intended by these regulations. As to non-revoked rulings generally, to the extend that such rulings do not materially conflict with the statute and these regulations, they remain in effect and may be relied upon to the extent provided in 19 U.S.C. 1625 and 19 CFR part 177.

It is also pointed out that any changes made to the rulings published in the Appendix to part 191 in this final rule are merely conforming to these regulations and do not adversely affect the public.

Comment: An objection was made about the planned transfer of drawback claims from the Customs field office where filed to another such office having more expertise in the handling of the particular claims, as was mentioned in the ''BACKGROUND'' section of the proposed rule.

Customs Response: Customs believes that the planned redistribution of drawback workload, as described, which, as observed in the proposed rule, is an internal work management issue not requiring regulatory action, will result in quicker, more efficient, and more accurate processing of drawback claims.

Comment: Changes were requested in the drawback and duty-deferral provisions, related primarily to inventory management procedures and accounting, that were promulgated in part 181, Customs Regulations (19 CFR part 181) pursuant to the North American Free Trade Agreement (NAFTA).

Customs Response: The provision in part 181 for accounting for fungible goods in inventory which are to be exported to Canada or Mexico in the same condition as imported and for which drawback is claimed under 19 U.S.C 1313(j)(1) is modified consistent with the changes to accounting methods for drawback in part 191 (see § 191.14). Under the amended provision, if all of the goods in a particular inventory are non-originating goods, the identification of the goods for purposes of designation for drawback shall be on the basis of one of the accounting methods authorized in 19 CFR 191.14, as authorized therein, including first-in first-out (FIFO), last-in, first out (LIFO), low-to-high (ordinary, with established average inventory turn-over period, and blanket methods), and average. Fungible originating and non-originating goods still may be commingled in inventory. When such originating and non-originating goods are commingled, the origin of the goods would continue to be determined according to the inventory methods provided for in the appendix to part 181, *see* 19 U.S.C. 3333(a)(2)(B). In this situation (*i.e.,* when originating and non-originating fungible goods are commingled in inventory), the identification of the goods for purposes of designation for drawback must also be on the basis of the inventory method from the appendix to part 181. The reason that one of the accounting methods authorized in § 191.14 may not be used in the latter instance is that to do so would make so complicated area that verification by Customs would be an extreme administrative burden.

Subpart A, Part 191

Comment: It was asked that definitions for ''merchandise'', ''articles'', ''perfecting'', ''restructuring'', and ''stay'' be added to proposed § 191.2. It was requested that a definition be included for the term ''operator'' as used in Appendix A, while another comment suggested adding a definition for the term ''records''.

Customs Response: Customs concludes that definitions for ''merchandise'' and ''articles'' are unnecessary and could prove confusing, inasmuch as these general terms have different meanings depending on the particular type of drawback involved. Also, Customs finds that the terms ''perfecting'', restructuring'', and ''stay'' are already adequately explained in the specific regulatory sections in which they appear. Furthermore, no definition of ''operator'' is added, but any confusion caused by the use of this term in the general manufacturing drawback rulings in Appendix A is removed by substituting ''Manufacturer or Producer'' therefor.

Customs has, however, determined to include a definition in § 191.2 for the term ''records'' based on the definition of this term appearing in 19 U.S.C. 1508. In addition, a definition of ''filing'', based in part on the definition of that term in 19 CFR 141.0a for purposes of the entry of merchandise, is included in § 191.2 to implement 19 U.S.C. 1313(l), which authorizes regulations which may include, but need not be limited to, the electronic submission of drawback entries. These definitions are added to § 191.2 in appropriate alphabetical order.

Comment: It was suggested that proposed § 191.2(a) defining the term ''abstract'' be clarified by stating that a certificate of manufacture and delivery when properly completed may serve as an abstract.

Customs Response: Customs finds that this is unnecessary. No reference is made in these regulations to an ''abstract of manufacturing records'', which is how the term ''abstract'' was apparently viewed. As used herein, an abstract is simply one of two methods (the other being the schedule method) by which a manufacturer may show the amount of merchandise used or appearing in the exported article. To make this clear, a paragraph (d) is included in § 191.23.

Comment: The definition for a certificate of delivery in proposed § 191.2(b) was addressed, with the suggestion being made that the definition provide for the delivery of the qualified or substituted article under 19 U.S.C. 1313(p) dealing with the substitution of finished petroleum products. It was further recommended that the definition be made consistent with proposed § 191.10, in particular by

providing that a certificate of delivery was also used to document intermediate transfers of merchandise or product.

Customs Response: These comments have merit. The transfer of a qualified article from a manufacturer, producer or importer, under 19 U.S.C. 1313(p), is added to the definition of a certificate of delivery in § 191.2(c), as redesignated, and this definition is made consistent with the meaning and purpose of a certificate of delivery as set forth in § 191.10.

In the case of certificates of delivery for transfers under 19 U.S.C. 1313(p), a certificate of delivery would be required for a transfer of the qualified article from the importer to the exporter and for all intermediate transfers of the qualified article from the importer to the exporter (§§ 1313(p)(2)(A)(iv), 1313(p)(2)(F)). Similarly, a certificate of manufacture and delivery would be required for a transfer of the qualified article from the manufacturer or producer to the exporter (intermediate transfers of the qualified article would require a certificate of delivery) (§§ 1313(p)(2)(A)(ii), 1313(p)(2)(F)). Because the exporter of the exported (substituted) article must itself either have manufactured or produced or imported the qualified article or have purchased or exchanged, directly or indirectly, the qualified article from the manufacturer or producer or the importer (§ 1313(p)(2)(A)(i), (ii), (iii), and (iv)), no certificate or delivery would be used for the substituted exported article under 19 U.S.C. 1313(p), (*i.e.*, because the exporter would not transfer the exported article and issue a certificate of delivery to itself).

Also, proposed § 191.2(d) defining the term ''Act'' is redesignated as § 191.2(b).

Comment: It was requested that the definition for a certificate of manufacture and delivery in proposed § 191.2(c) be changed to make it consistent with proposed § 191.24.

Customs Response: Customs agrees and has modified the definition of a certificate of manufacture and delivery in § 191.2(d), as redesignated, to be consistent with the information for this certificate as set forth in § 191.24. Also, § 191.2(d) adds a cross-reference to § 191.24.

Comment: The recommendation was made that the definition for commercially interchangeable merchandise in proposed § 191.2(e) include a reference to proposed § 191.32(c) dealing with determinations of commercial interchangeability under the substitution unused merchandise drawback law. A comment urged that proposed § 191.32(c) be changed to declare that commercial interchangeability existed if the governing criteria in this regard were substantially rather than completely met.

Customs Response: A cross reference to § 191.32(c) is added to § 191.2(e). However, Customs cannot change § 191.32(c) as requested. The criteria employed in determining commercial interchangeability is adopted from the legislative history of the substitution unused merchandise drawback law. However, to better implement legislative intent in this regard, § 191.32(c) is changed to provide that in determining commercial interchangeability, Customs will evaluate the critical properties of the substituted merchandise. It is noted that procedures for contesting specific rulings on commercial interchangeability are found in 19 U.S.C. 1625 and 19 CFR part 177.

Comment: It was observed that the definition of designated merchandise appearing in proposed § 191.2(f) to include drawback products could be misleading in relation to proposed § 191.26(b)(3) which provided for exportation or destruction ''within 5 years of the importation of the designated merchandise'', the concern apparently being that drawback products would not be imported.

Customs Response: Customs agrees, and has appropriately modified § 191.27(b)(3) as redesignated. No change to the definition of designated merchandise in § 191.2(f) is warranted.

Comment: It was variously contended that the definition of destruction in proposed § 191.2(g) should provide for the allowance of drawback when merchandise was not completely destroyed, had value, and was partially recovered or recycled.

Customs Response: It is Customs position that the proposal to allow drawback when complete destruction does not occur (and the resulting scrap has value) is not within Customs authority to implement by regulations.

Comment: A suggestion was made that the definition for direct identification drawback reflect that such identification could be effected using an approved accounting method provided for in proposed § 191.14.

Customs Response: Customs agrees. Section 191.2(h) is modified accordingly.

Comment: A request was made that the definition of drawback in proposed § 191.2(i) state the amount of the drawback refund and include a cross reference to proposed § 191.3 concerning the types of duty which could be the subject of drawback recovery.

Customs Response: A reference to § 191.3 is added to § 191.2(i). However, the measure of the drawback refund is not warranted. Customs has reviewed each kind of drawback to ensure that in situations in which the amount of drawback recovery is 100%, the applicable regulation specifically so states.

Comment: It was remarked, with respect to the definition for drawback product in proposed § 191.2(l), that such a product need not be ''wholly'' manufactured in the United States.

Customs Response: This comment has merit. The reference to a drawback product as being wholly manufactured in the United States is deleted.

Comment: The suggestion was put forth that the definition of exportation in proposed § 191.2(m) be revised to make provision for the lading of goods on qualifying vessels and aircraft under 19 U.S.C. 1309.

Customs Response: Customs agrees. Section 191.2(m) is revised consistent with 19 U.S.C. 1309 and reference to 19 CFR 10.59 through 10.65 is added. Also, as already noted, a definition of ''exporter'' is added to this provision, consistent with the definition of this term in the regulations of the Bureau of Export Administration, Department of Commerce (15 CFR part 772).

Consistent with the definition of ''exportation'', the definition of ''exporter'' provides that for ''deemed exportations'' the exporter is the person who as the principal party in interest in the transaction deemed to be an exportation has the power and responsibility for determining and controlling the transaction (*e.g.*, in the case of aircraft or vessel supplies under 19 U.S.C. 1309(b), the party who has the power and responsibility for lading the supplies on the qualifying aircraft or vessel). Thus, if an aircraft or vessel operator has such power and responsibility, that aircraft or vessel operator is the exporter and is entitled to claim drawback or to waive and assign the right to claim drawback to another authorized party (see § 191.82). If another party (*e.g.*, a fuel supply company) has such power and responsibility, that party is the exporter and is entitled to claim drawback or to waive and assign the right to claim drawback to another authorized party. This will enable the public, and Customs, to identify with greater certainty the party responsible for keeping records of exportation and the party who may claim drawback.

Comment: It was recommended that the term ''general manufacturing drawback ruling'' in proposed § 191.2(o) be changed to ''general drawback

statement''. It was asked that any new general rulings be published first as Treasury Decisions (T.D.s) and thereafter included in Appendix A to part 191.

Customs Response: Customs hereby affirms the change from drawback ''contracts'' to ''rulings'', which was occasioned only after thorough review and consideration, as noted in the proposed rule (see 62 FR 3086). The reasons for this change were thoroughly described in the proposed rule (see 62 FR 3083 and 3096–3087).

The comment suggesting that new general rulings should first be published as T.D.s and subsequently added to the Appendix has merit and is adopted. To this end, the definition for general manufacturing drawback rulings now appearing in § 191.2(p), as redesignated, is changed to note that such rulings will be published as T.D.s and in Appendix A of part 191. This change is also effected in greater detail in § 191.7 dealing with the procedures for general manufacturing drawback rulings.

Additionally, the explanation in the definition stating when a manufacturer or producer may operate under a general manufacturing drawback ruling and describing the procedures for such rulings is removed as unnecessary and not a part of the definition. The removed material is instead provided for in § 191.7.

Comment: The question was asked as to whether the definition of manufacture or production in proposed § 191.2(p) was intended in any way to undermine existing precedential rulings or decisions in this connection.

Customs Response: There is no intent to change the existing definition of manufacture or production for drawback purposes (now redesignated as § 191.2(q)). This was made clear in the proposed rule.

Comment: It was asked that the term ''possession'' in proposed § 191.2(q) be further defined and explained.

Customs Response: Customs believes that the definition of possession (now redesignated as § 191.2(s)), which is based on the language of the statute (19 U.S.C. 1313(j)(2)), is sufficiently clear as is.

Comment: With respect to proposed § 191.2(r) defining relative value in situations where multiple products concurrently result in manufacture, it was suggested that a definition be included in proposed § 191.2 for multiple products.

Customs Response: Customs agrees. A definition for multiple products as ''two or more products produced concurrently by a manufacture or production operation or operations'' is added in appropriate alphabetical order to § 191.2. The definition for relative value is redesignated as § 191.2(u), and the reference to by-product appearing therein is removed.

Comment: Changes were suggested to the definition for substituted merchandise in proposed § 191.2(s) to provide, respectively, for substitution under 19 U.S.C. 1313(b), 1313(j)(2), and 1313(p). Also, it was suggested that this definition be placed in alphabetical order in proposed § 191.2.

Another comment requested that Customs provide guidance to the trade as to what constituted a substantial change in manufacture or production, which would preclude merchandise from being of the ''same kind and quality'' under 19 U.S.C. 1313(b), the criterion for permitting substitution for drawback purposes thereunder. This comment asked that merchandise falling under the same 8-digit harmonized tariff schedule (HTS) number be accepted as being of the same kind and quality.

Customs Response: Customs has revised the definition for substituted merchandise under § 191.2(x), as redesignated, so as to simplify it. Also, the definitions in § 191.2 have been placed in alphabetical order.

However, the comment suggesting the inclusion of an explanation as to what constitutes a substantial change in manufacture or production which would preclude a finding of same kind and quality under 19 U.S.C. 1313(b) is not adopted, inasmuch as Customs believes that such determinations are better made on a case-by-case basis. While the use of the HTS number is expressly recognized for this purpose under 19 U.S.C. 1313(p), no such provision to this effect exists in § 1313(b).

Comment: Various concerns were expressed over the definition of a specific manufacturing drawback ruling under proposed § 191.2(u); it was generally desired that the term ''ruling'' be changed to ''statement'', which would occasion the removal of the reference to the applicability of 19 CFR part 177 to such rulings. Since a ruling under part 177 applied to prospective transactions, it was principally asked whether drawback claims could still be filed prior to issuance of a general or specific manufacturing drawback ruling, and what type of confidential treatment would be accorded the manufacturing drawback ruling request.

Customs Response: As already noted, Customs has determined to retain the term ''ruling'' in § 191.2(w), as redesignated, rather than the term ''contract'' or ''statement'', for the reasons amply explained in the proposed rule. In any event, § 191.27(c) as redesignated makes it clear that drawback claims may continue to be filed before a letter of notification of intent to operate under a general manufacturing drawback ruling is acknowledged or a specific manufacturing drawback ruling is approved.

Also, the applicability of 19 U.S.C. 1625 and 19 CFR part 177 to a drawback ruling hereunder will not affect the confidentiality otherwise accorded under the Freedom of Information Act either to an application for a specific manufacturing drawback ruling, or to a letter of intent to operate under a general manufacturing drawback ruling. That is, the general ''ruling'' is the published T.D. appearing in Appendix A to part 191. In the case of a specific manufacturing drawback ruling, the ''ruling'' is the letter of approval issued by Customs, which would be published as a synopsis in the Customs Bulletin. Section 191.2(w) as redesignated is changed to clarify this.

Comment: With respect to proposed § 191.3(a), clarity was requested regarding the payment of drawback on voluntary tenders made in connection with notices of prior disclosure pursuant to 19 U.S.C. 1592(c). Also, it was advocated that proposed § 191.3(a)(1)(iii) set forth a definition of what comprised voluntary tenders subject to drawback, in order to avoid confusion.

It was suggested that proposed § 191.3(a)(1) (ii), (iii) and (iv) be changed to simply reference proposed § 191.81 which would contain the substantive requirement pertaining to the provisions that a written request be submitted for the payment of drawback, along with a waiver of payment under any other provision of law. It was also suggested that proposed § 191.3(a)(1)(iii) be changed to indicate that any waiver be conditioned on the refund being received as drawback and not subject to repayment. A comment asked with reference to proposed § 191.3(a) (and proposed § 191.81) that the filing of the written request waiver be allowed at any time prior to final liquidation of the drawback entry.

In addition, in proposed § 191.3(a)(1) (iii) and (iv), a question was presented as to the need for a waiver of payment in the case of warehouse withdrawals whose liquidation had become final.

It was also noted that the references in proposed § 191.3(a)(1) (ii), (iii), and (iv) to § 191.82 (b) and (c) should be instead to proposed § 191.81 (b) and (c).

Customs Response: The erroneous citations are duly corrected.

The comment suggesting a clear definition of ''voluntary tenders'' has merit and is adopted. ''Voluntary tenders'' are thus defined in § 191.3(a)(1)(iii) for purposes of § 191.3, as a payment of duties on imported merchandise in excess of the amount of duties included in the liquidation of the entry, or withdrawal from warehouse, for consumption, provided that the liquidation has become final and that the other conditions in the provision and § 191.81 are met.

In response to the comment about what must be waived, it is any claim to payment or refund limited to the drawback granted. However, this is provided for in § 191.81(c), not in § 191.3. Also in this regard, the comment that the written request and waiver may be filed at any time prior to final liquidation of the drawback entry requires no change to § 191.81(c) because there is no time limit provided therein.

The comment suggesting inclusion of tenders made in connection with a notice of prior disclosure pursuant to 19 U.S.C. 1592 has merit and is adopted. The adoption of this suggestion is implemented by combining § 191.3(a)(1)(iii) and (iv), and adding to it tenders of duty made in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4), so that there is now one provision (§ 191.3(a)(1)(iii)) providing that duties subject to drawback include tenders of duties after liquidation has become final, such tenders to include voluntary tenders, including tenders of duty in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4), and duties restored under 19 U.S.C. 1592(d).

Insofar as the comment suggesting the removal to § 191.81 of the requirement for filing a written request and waiver is concerned, this comment has merit. The provision is being changed to refer to § 191.81, which will contain the substantive requirement for a written request and waiver. In answer to the question of why a waiver would be needed for warehouse withdrawals, the reason such a waiver would be needed is that the warehouse withdrawal for consumption would have been liquidated, and liquidation would have become final, after which the tender upon which drawback is claimed would have been made, so that a waiver would be desirable to ensure that Customs would not pay *both* drawback and a refund of the tender under some other provision of law.

Comment: The assertion was made, with respect to proposed § 191.3(b), that harbor maintenance fees should be subject to drawback. Also, a comment wanted drawback payable on interest paid pursuant to post-entry assessments.

Customs Response: Customs disagrees that harbor maintenance fees should be subject to drawback, inasmuch as such fees are imposed in connection with part use, not importation of merchandise (within the legal meanings of 19 U.S.C. 1313 and 26 U.S.C. 4462). Likewise, drawback is not payable on interest.

Comment: A comment asserted that proposed § 191.3(c) needed to be revised specifically to make clear that products falling within the tariff-rate quota (but not payable at the over-quota rate of duty) were eligible for all types of drawback, while products assessed the over-quota rates of duty were eligible only under 19 U.S.C. 1313(j)(1), with tobacco being eligible under both 19 U.S.C. 1313(j)(1) and 1313(a).

Customs Response: This comment has merit and is adopted. The provision is re-drafted accordingly.

Comment: One comment suggested that, in proposed § 191.4(b), the word ''was'' be changed to ''is''.

Customs Response: The comment has merit and is adopted.

Comment: It was contended that proposed § 191.6 concerning who may sign drawback documents was in contradiction to proposed § 191.8 dealing with specific manufacturing drawback rulings, as well as 19 CFR part 177 regarding the submission of requests for rulings. One such comment noted that the list of persons did not include attorneys who should have signing authority for their clients at least with respect to applications for drawback rulings.

Customs Response: These comments have merit, insofar as they raise questions regarding the applicability of the limitations on who may conduct ''Customs business'' under 19 U.S.C. 1641 and 19 CFR part 111. The comments are adopted, and § 191.6 is appropriately redrafted to add a new paragraph (c), so that the persons listed in paragraph (a) are the only persons who may sign any of the documents listed in paragraph (b).

Under new paragraph (c), letters of notification of intent to operate under a general manufacturing drawback ruling (§ 191.7(b)) and applications for a specific manufacturing drawback ruling (§ 191.8), as well as requests for nonbinding predeterminations of commercial interchangeability (§ 191.32(c)(2)), applications for waiver of prior notice (§ 191.91), applications for accelerated payment (§ 191.92), and applications for participation in the drawback compliance program (subpart S) may be signed by any of the persons listed in paragraph (a), or any other individual legally authorized to bind the person (or entity).

Comment: Referring to proposed § 191.6(a)(1), a question was raised as to who specifically would be ''any other individual legally authorized to bind the corporation''.

Customs Response: The comment has merit. The word ''individual'' therein is changed to ''employee''.

Comment: With respect to proposed § 191.6(a)(4), it was suggested that any employee of ''a'' business entity be changed to ''the'' business entity.

Customs Response: The comment has merit and is adopted.

Comment: One comment expressed concern that the authority of an individual acting on his or her own behalf, as set forth in proposed § 191.6(a)(5), implied that an unlicensed person might be permitted to conduct Customs business.

Customs Response: This provision is intended to provide for a situation in which an individual (*e.g.*, an individual drawback claimant or exporter) signs documents in his or her own capacity. Since the provision contains the modifier ''acting on his or her own behalf'', Customs does not believe that this provision could be interpreted to allow an unlicensed person to conduct Customs business on behalf of another (see 19 U.S.C. 1641(a)(2)).

Comment: A question was presented as to whether proposed § 191.6(b) should include a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

Customs Response: The suggestion that Notices of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback should be listed as one of the documents that can be signed by the persons in § 191.6(a) has merit and is adopted.

Comment: A concern was raised about ''endorsements'' of exporters on bills of lading or evidence of exportation in proposed § 191.6(b)(6).

Customs Response: The comment appears to be concerned that the practice of permitting blanket letters of endorsement (which should be blanket certifications) be provided for in the regulations. This comment has merit and is adopted; the reference to ''Endorsements'' is changed to ''Certifications'', and citations to §§ 191.28 (as redesignated from proposed § 191.27) and 191.82 are added in § 191.6(b)(5), as redesignated (proposed § 191.6(b)(7) is also redesignated as § 191.6(b)(6)). It is noted that §§ 191.28 as redesignated and 191.82 are modified to provide for ''blanket'' certifications.

Comment: As to proposed § 191.7 dealing with general manufacturing drawback rulings, the recommendation was made in connection with proposed § 191.2(o) that the term ''rulings'' be changed to ''statements''.

It was asked that general drawback rulings be published first as T.D.s, and then subsequently be included in Appendix A to part 191. Another comment asked how the general rulings in Appendix A would be identified.

A comment wanted Customs to acknowledge requests for general rulings within 30 days.

It was stated that approved letters of intent should receive a unique computer-generated ruling number.

The question was asked as to how modifications of letters of intent to operate under a general ruling would be handled; a comment wanted provisions included in proposed § 191.7 concerning the use of accounting procedures and tradeoff; another comment stated that there was no provision for transferring a general ruling to another drawback office.

Customs Response: In regard to the comment suggesting that new general rulings should first be published as T.D.s and subsequently added to the Appendix, this comment has merit and is adopted in § 191.7(b)(1). Furthermore, the general manufacturing drawback rulings in Appendix A are being identified by their T.D. numbers.

In regard to the change in nomenclature (from ''rulings''), these comments are not adopted, as previously discussed in reference to proposed § 191.2(o).

In regard to the suggestion that there should be a time limitation on acknowledgments by drawback offices of applications and that the time should be 30 days, Customs is not adopting this suggestion, as such, but is adding in § 191.7(c) that Customs is required to act ''promptly'' on applications. Because drawback claims may be filed pending acknowledgment of a letter of notification of intent to operate under a general drawback ruling or before approval of a specific manufacturing drawback ruling (see § 191.27(c) as redesignated), it is Customs' position that a time limit for action is not necessary.

In regard to the comment suggesting a unique electronic ruling number for each general manufacturing drawback ruling, this comment has merit and is also added in § 191.7(c).

In regard to the comment asking how modifications to letters of intent are to be made, because letters of notification of intent are relatively short and simple, no provision like that appearing in § 191.8(g) is provided. When the information included in a letter of notification of intent changes, a new letter of notification of intent must be filed.

The suggestion relating to a statement regarding the use of a particular accounting method and the use of tradeoff under the general manufacturing drawback ruling is not adopted (because application of those provisions is provided for in the applicable regulations).

In regard to the comment that the regulation does not address how a change in the drawback office where claims will be filed may be made, no provision such as that added to § 191.8 is being provided for in this section (because, as is true of modifications, letters of intent are relatively short and simple). When the person who submitted the letter of intent wishes to add a different drawback office, a new letter of intent (to that drawback office) must be filed.

Comment: The observation was made that the identification of the general manufacturing drawback rulings was potentially confusing. It was suggested that the precise general manufacturing drawback ruling under which the manufacturer proposed to operate should be listed as one of the requirements in proposed § 191.7(b)(3) and that the general manufacturing drawback rulings in Appendix A should be identified by their Treasury Decision numbers (or some other Customs-assigned number).

Customs Response: This comment has merit and is adopted. Section 191.7 is revised to include a paragraph (b)(3)(iv) to this effect, with redesignation accordingly. As already noted, the T.D. numbers of the respective general manufacturing drawback rulings have been included in Appendix A.

Comment: A comment, with respect to proposed § 191.7(b)(2), stated that the number of copies of letters of intent required to be submitted should be limited to only one copy per drawback office.

Customs Response: This comment has merit and is adopted.

Comment: Concerning proposed § 191.7(b)(3)(iv), one comment asked that a description of the merchandise and articles be included in the letter of intent under a general ruling, while another comment wanted to require a description of the manufacturing process. A third comment asked about the processing of a letter of intent under proposed § 191.7(c).

Customs Response: Section 191.7(b)(3)(v), as redesignated from proposed § 191.7(b)(3)(iv), requires that merchandise and articles be described unless specifically described in the letter of notification (instead of ''letter of notification'', this should have read ''general manufacturing drawback ruling'' and is changed accordingly). There are instances in which the merchandise and articles are specifically so described (*e.g.*, orange juice (T.D. 85–110, raw sugar (T.D. 83–59)) and it is in these situations that the merchandise and articles do not have to be described (because they are already described in the general manufacturing drawback ruling).

As for the second comment, § 191.7 is changed by adding a paragraph (b)(3)(vi) (with redesignation accordingly), to provide that a letter of notification of intent to operate under a general manufacturing drawback ruling must include a description of the manufacture, if such a description is not already described in the general manufacturing drawback ruling.

Additionally, § 191.7(c) is changed to provide that the drawback office will acknowledge the letter of intent *if:* (1) the letter of notification of intent is complete; (2) the general manufacturing drawback ruling identified by the manufacturer or producer is applicable to the manufacturing or production process described; (3) the general manufacturing drawback ruling is followed without variation; and (4) the manufacturing or production process described meets the definition of a manufacture or production under § 191.2(q) (as redesignated).

In this latter regard, as further provided in § 191.7(c), the letter of acknowledgment from the drawback office will contain specific authorization to operate under the general manufacturing drawback ruling, subject to the requirements and conditions of that general manufacturing drawback ruling and the law and regulations.

In addition, § 191.7(c) is revised to require that the manufacturer or producer be advised, in writing, if the letter of intent cannot be acknowledged. To this end, if the letter of notification of intent to operate under a general manufacturing drawback ruling includes conditions or terms varying from the general manufacturing drawback ruling published as a T.D. or in Appendix A, the drawback office may not acknowledge the letter and will return it to the manufacturer or producer for modification and resubmission or for submission to Customs Headquarters as a specific manufacturing drawback ruling.

Comment: It was commented, with respect to proposed § 191.7(b)(3)(vi),

that the requirement of a suffix to the IRS number should be included.

Customs Response: The comment that a suffix to the IRS number should be stated has merit and is adopted. This provision is redesignated as § 191.7(b)(3)(viii).

Comment: A comment requested that, rather than terminating a ruling automatically after 5 years of non-use, proposed § 191.7(d) be changed to permit a manufacturer a period of time, such as 60 days, within which to request Customs not to revoke the ruling.

Customs Response: This request is not adopted. This suggestion would add unnecessarily to the administrative burden of processing drawback. If a claimant is inactive for 5 years and notice of termination is published, the claimant may, under the very simple procedures provided in § 191.7, submit a new notification of intent to operate under the general manufacturing drawback ruling.

Comment: The statement was made, in relation to proposed § 191.8 addressing the procedures for specific manufacturing drawback rulings, that the term be changed from ''rulings'' to ''statements'', and that requests for manufacturing contracts under 19 U.S.C. 1313(a) should continue to be approvable by local drawback offices.

Customs Response: As already averred, Customs has determined to retain the change from drawback ''contracts'' or ''statements'' to ''rulings''. Drawback offices would, as proposed and as in this final rule, acknowledge receipt of letters of notification of intent to operate under a general manufacturing drawback ruling under 19 U.S.C. 1313(a) (unless the proposal varied from the general manufacturing drawback ruling, in which case Headquarters approval would be necessary.) An application for a specific manufacturing drawback ruling under § 191.8(d) must be submitted to Customs Headquarters.

Comment: A comment suggested that the IRS number required in the application for a specific ruling in proposed § 191.8(c)(2), include the suffix.

Customs Response: This comment has merit and is adopted.

Comment: A comment with respect to proposed § 191.8(e)(1) questioned the use of T.D.s under which to publish approved drawback rulings. It was noted that the term ''contract'' was inadvertently used in this provision. Another comment suggested that the Headquarters approval letter should include the computer-generated ruling number.

Customs Response: Customs is not prepared at this time to eliminate the use of T.D.s for this purpose. The comment noting the misuse of the term ''contract'' in this provision is correct; the provision is changed. The comment that the Headquarters approval letters should include the computer-generated number has merit and is adopted.

In addition, consistent with the comment and response for § 191.7(b)(2), only 1 copy of the approved application for the specific manufacturing drawback ruling is forwarded to the appropriate drawback office(s). A change to this same effect is made in § 191.8(d).

Comment: A comment on proposed § 191.8(e)(2) stated that, for consistency, the notification to an applicant that the application could not be approved should be in writing. Another comment suggested that the term ''promptly'' (within which to notify the applicant that the application could not be approved) should be specifically defined.

Customs Response: The comment suggestion that the notice of disapproval be in writing has merit and is adopted. However, the suggestion that ''promptly'' be specifically defined is not adopted.

Comment: Concerning the modification of specific manufacturing drawback rulings in proposed § 191.8(g), it was variously asked if changes in corporate officers, changes in factory locations, changes in the basis of claim, changes in filing location, and changes in brokers could also be handled by the limited modification procedure, set forth in proposed § 191.8(g)(2), or were they intended to be made through Headquarters, as provided in proposed § 191.8(g)(1) which required the filing of a supplemental application in the form of the original application.

Another comment asked for which limited modification should the drawback office notify Headquarters, for which limited modification should the drawback office notify the claimant in writing of receipt, and for which limited modification should the ACS (Automated Commercial Systems) drawback database ruling be revoked and reissued, and when would an amendment be appropriate.

Customs Response: These comments have some merit and, to the extent necessary, are adopted in § 191.8(g)(2). It is noted that changes in factory locations are already covered in § 191.8(g)(2)(i)(A), and changes in corporate officers and brokers are covered by the provision for those persons who will sign drawback documents in § 191.8(g)(2)(i)(D) (corporate officers are no longer required).

Changes in the basis of claim are added in § 191.8(g)(2)(i), as are changes in the filing location. In addition, changes in the decision to use or not to use an agent for drawback purposes, and the identity of an agent if one is used, are made subject to the limited modification procedures.

In the case of changes in the filing location, Customs is adding to the regulation a provision (§ 191.8(g)(2)(iii)), based on current practice as shown by a letter of October 19, 1960 (published as Customs Information Exchange letter (CIE) 1454/60), which permits the change of the drawback office where claims will be filed.

Under the foregoing provision in § 191.8(g)(2)(iii), the claimant files, with the new drawback office, a written application to file claims at that office, with a copy of the application and approval letter from the drawback office where claims are currently filed. The claimant is required to provide a copy to the latter drawback office of the written application to the new drawback office.

Also, § 191.8(g)(2)(ii) is revised to specifically provide detailed procedures for handling limited modifications (the drawback office is given notice by the manufacturer or producer operating under a specific manufacturing drawback ruling, with a copy to Customs Headquarters, and the drawback office acknowledges acceptance of the limited modification in writing to the manufacturer or producer (with a copy to Customs Headquarters) and makes corresponding changes to the ACS drawback database, as necessary (the latter (changes to the ACS drawback database) is not provided for in the regulations, as this is an internal administrative procedure). No revocation in the ACS drawback database is necessary.

Furthermore, to simplify the process and limit the administrative burden, the provision for supplemental application procedures in § 191.8(g)(1) is changed to provide that, at the discretion of the manufacturer or producer, a supplemental application may be in the form of an original application or it may include only the provisions in the specific manufacturing drawback ruling application that are sought to be modified, and the unchanged provisions, in an existing approved specific manufacturing drawback ruling, may be incorporated by reference to the approved ruling.

Comment: It was desired that a successorship under 19 U.S.C. 1313(s) be handled under the limited

modification procedure of proposed § 191.8(g)(2).

Customs Response: This comment is not adopted. Successorships under § 1313(s) are subject to the supplemental application procedures. However, it is noted here that the supplemental application procedures of § 191.8(g)(1) have been simplified.

Comment: A change was requested in the duration of the approval of a specific drawback ruling in proposed § 191.8(h). A comment asked about the effect of these final regulations on existing drawback contracts.

Customs Response: The comment suggesting a change to the duration of the approval of a drawback ruling is not adopted. Customs believes that this suggestion would add unnecessarily to the administrative burden of processing drawback.

As for the comment questioning the effect of these regulations on existing drawback ''contracts'' under the prior subparts B and D of part 191, such existing drawback ''contracts'' may continue to be relied upon by the manufacturer or producer who applied for or adhered to the ''contract'', *provided that such existing drawback ''contracts'' do not materially conflict with the statute or these regulations.* Existing drawback ''contracts'' which materially conflict with the statute or these regulations are superseded by the statute or these regulations effective as follows. A drawback entry based upon existing drawback ''contract'' which materially conflicts with these regulations and for which exportation is before the effective date of these regulations is governed by the existing drawback ''contract'', unless there is also a necessary material conflict with the amendments to the statute (19 U.S.C. 1313) made by the NAFTA Implementation Act (Public Law 103–182, § 632), in which case the effective date of § 632 of that Act controls.

It is further noted, with respect to § 191.8(h), that the reference to part 177 in this provision is modified to include a reference as well to 19 U.S.C. 1625.

Comment: With reference to proposed § 191.9 dealing with the principal-agent procedure in drawback, one comment opposed limiting the principal-agent procedure exclusively to substitution manufacturing drawback under 19 U.S.C. 1313(b), stating that the procedure should be available as well under 19 U.S.C. 1313(a).

It was said that the terms ''owner'', ''principal'', ''agent'', ''use'' and ''manufacture'', as employed therein, should be more clearly defined. It was also remarked that the specific provisions required in the contract between the principal and agent in proposed § 191.9(c) should be deleted, particularly if such a contract was required to be in force before there was any transfer of merchandise. The provision, if retained, should allow for oral contracts. It was also contended here that legal or equitable title, but not both, to the merchandise in question should be enough to establish principal status under the contract.

It was contended that the requirement that the agent provide a certificate of manufacture and delivery to the principal should be eliminated or be allowed to be waived in appropriate circumstances.

Customs Response: The intent was to limit this provision to drawback under 19 U.S.C. 1313(b) where the imported merchandise was used in manufacture or production by the principal or an agent and the exported article or drawback product was respectively manufactured or produced by an agent or the principal, or the imported merchandise was used in manufacture or production and the exported article or drawback product was manufactured or produced by different agents.

After further consideration and consistent with Customs current practice, Customs is now taking the position that the application of drawback principal-agent principles need not be so limited. The provision applies to drawback under 19 U.S.C. 1313(b) and 1313(a) and may be used regardless of whether different parties (agent-principal, principal-agent, or two agents) are involved. To this end, § 191.9(a) as proposed is deleted, with the succeeding paragraphs redesignated accordingly Section 191.9(a), as thus redesignated from proposed § 191.9(b), is revised as described.

As much as possible, the terms questioned (owner, principal, agent, and use in manufacture or production) are clarified in § 191.9(a) and (c) as thus redesignated.

The provision in § 191.9(b), as redesignated from proposed § 191.9(c), for what the contract (between principal and agent) must provide, is retained, to provide notice to persons using this provision of what is required, but rather than mandating that the requirements be ''specified'', the requirements are to be ''included'' in the contract.

As for the comment that a contract should not be required to have been in force before there was a transfer of merchandise, § 191.6(b) as redesignated provides the requirements for a principal-agent drawback relationship. To use the principal-agent procedures in drawback, these requirements must be met (*i.e.*, for the principal to be deemed the manufacturer or producer when the agent does the physical manufacturing or production, the requirements (including those for a contract) must be met, although there is no requirement that the contract be in writing).

Regarding the comment that the provision should specifically authorize oral contracts, redesignated § 191.9(b) does not require the form that the contract must take; it requires that there be a contract and what the contract must contain.

As for the comment referring to legal and/or equitable title, the basic requirement in redesignated § 191.9(b) for assertion of the principal-agent relationship under the provision is that the principal be ''[a]n owner'' of the merchandise. It is Customs position here that the requirement for both legal and equitable title is consistent with the requirements for assertion of the principal-agent relationship for drawback purposes.

Consistent with the purpose of a certificate of manufacture and delivery and with the treatment of the owner-principal as the manufacturer or producer when an agent performs the manufacturing or production operations for the principal, no certificate of manufacture and delivery is required from the agent to the principal. Hence, § 191.9(d) as redesignated from proposed § 191.9(e) is revised as described. As such, the comment regarding waiver of the requirement for certificate of manufacture and delivery from the agent to the principal is moot.

However, to ensure compliance with the drawback law, while simplifying drawback procedures where possible, a principal using the principal-agent procedures for drawback is required to attach to its drawback entries, or certificates of manufacture and delivery, a certificate certifying that it can establish certain specific facts, upon request by Customs. The principal must certify that it can establish the information that would have otherwise been required in a certificate of manufacture and delivery. The certificate and information are specifically provided to be subject to the recordkeeping requirements in § 191.26 as redesignated (including the requirement for maintenance of records 3 years from the date of payment of a drawback claim). Provision is also made for the certificate to be in ''blanket'' form, covering a particular kind and quality of merchandise for a stated period.

Comment: In proposed § 191.10, it was asked that transfers under 19 U.S.C. 1313(p) included among the purposes

for which a certificate of delivery may be used.

It was also suggested that the word ''exists'' instead of ''has attached'' be used in proposed § 191.10(a)(2). In addition, it was stated that the term ''if applicable'' should be used for the information required in proposed § 191.10(b)(3), (7), and (8). It was also said that it was unclear when the HTSUS would be required for merchandise under proposed § 191.10(b)(10).

The requirement in proposed § 191.10(b)(5) that the total duty paid be shown on the certificate of delivery was opposed. It was advocated that Customs, with its computer access, should itself be able to identify the duties paid on the imported merchandise on which drawback was claimed.

It was also contended that certificates of manufacture and delivery (as opposed to certificates of delivery) should be used in all cases where the transferred article was manufactured under drawback conditions, and, as such, that proposed § 191.10(c)(2) be eliminated. It was suggested that there be a clarification as to the requirement for a certificate of delivery to transfer articles received by an intermediate party from a drawback manufacturer or producer.

One comment asked that the recordkeeping requirement in proposed § 191.10(d) be eliminated. Another comment suggested that a citation to 19 U.S.C. 1508(c) be added to this provision, indicating the statutory basis for the record retention requirement here.

With regard to proposed § 191.10(e) relating to the submission of a certificate of delivery to Customs, concerns were raised about the language of this provision. In particular, it was stated that the certificate was not ''part'' of a drawback claim, but that it ''supported'' the claim; and that the claim submitted without the certificate should not be ''rejected'', but would be ''denied''.

Customs Response: The comment relating to inclusion of transfers under 19 U.S.C. 1313(p) among the purposes for which a certificate of delivery may be used is adopted, to the extent provided therein (see CUSTOMS RESPONSE to the comment on the definition of certificate of delivery, in proposed § 191.2(b) redesignated as § 191.2(c), above).

In regard to the comment that the three effects of certificates of delivery should be included in the regulation, this has been provided for in § 191.2(c) as redesignated.

The suggestion that the term ''exists'' be used in place of ''has attached'' in § 191.10(a)(2) is adopted.

As for the requirement in § 191.10(b)(5) that total duty paid be stated on a certificate of delivery, Customs believes this information is no more sensitive than other information required on the certificate (*e.g.*, the HTSUS number and entry number with the person from whom the merchandise was received (usually the importer)). The procedure suggested by the comment would be effective in the verification stage, but would create an untenable administrative burden in Customs processing of drawback claims and of accelerated payment claims.

The comment that ''if applicable'' should be included for § 191.10(b)(3), (7), and (8) (information required on a certificate of delivery includes import entry number, date of importation, and port where import entry filed), is also not adopted. The requirement for this information is applicable for all certificates of delivery (there is always an import number, date of importation, and port of import entry filing for a drawback claim).

The comment questioning when HTSUS numbers are required for certificates of delivery has merit, in that it points out a lack of clarity in the regulation. The provision is modified, by adding § 191.10(b)(11) and (12), to make it clear that the HTSUS number (to at least 6 digits) is always required for the designated imported merchandise on a certificate of delivery and, additionally, when the certificate of delivery transfers merchandise substituted under 19 U.S.C. 1313(j)(2) for the designated imported merchandise, the HTSUS number or Schedule B commodity number (to at least 6 digits) is likewise required for the substituted merchandise. Otherwise (*e.g.*, if what is transferred is an article manufactured under 19 U.S.C. 1313(a) or (b) from a party who received the article from the manufacturer or producer), no such number is required for the article transferred.

In any event, although only the 6-digit HTSUS or Schedule B commodity number is required on the certificate of delivery for the transfer of substituted merchandise under 19 U.S.C. 1313(j)(2), full tariff classification is required to establish commercial interchangeability under 19 U.S.C. 1313(j)(2) (see § 191.32(c)).

The comment that certificates of manufacture and delivery should be used in all cases where a manufactured article is being delivered is inconsistent with the purposes of the two kinds of certificates (of delivery and of manufacture and delivery). The former is used when the deliverer did not manufacture or produce the merchandise or article transferred and the latter is used when the deliverer did manufacture or produce the article transferred. It is Customs position that this provision is the most simple for the public to follow and the most simple for Customs to administer. This comment is not adopted.

The comment suggesting clarification of the requirement for a certificate of delivery to transfer articles received by an intermediate party from a manufacturer or producer (under 19 U.S.C. 1313(a) or (b)) has some merit. Section 191.10(c)(2) is changed to make it clear that the manufacturer or producer transfers the manufactured or produced article on a certificate of manufacture and delivery and subsequent non-manufacturers or producers who are intermediate parties transfer the article on a certificate of delivery (as already stated, the certificate of delivery for such a transfer would not require the 6-digit HTSUS number for the transferred article).

The requirement for retention of records supporting the information on certificates of delivery for 3 years after payment of a drawback claim is statutorily required (see 19 U.S.C. 1508(c)(3)). The comment suggesting inclusion in the regulation of a citation to 19 U.S.C. 1508(c)(3) has merit and is adopted. In addition, to alert the public to the general applicability to drawback of the statutory recordkeeping requirements in 19 U.S.C. 1508, a new § 191.15, based on § 1508, is added stating those general requirements.

The comment concerning the particular language used in § 191.10(e) has merit and is adopted. Consistent with § 191.51, certificates of delivery are not ''part'' of claims but support claims, so that if Customs requests a certificate of delivery upon which a drawback claim is dependent and the certificate is not provided, the claim is not rejected but, instead, is denied.

Since a certificate of delivery is not ''part'' of a complete claim (as the regulation is modified), providing a certificate of delivery upon Customs request is in the nature of ''perfecting'' a claim (see § 191.52 (note the addition of this as one of the instances of perfection provided in § 191.52(b))) and may be done outside the 3-year time for filing a complete claim. Denial of a drawback claim for failure to supply, in response to Customs request, a certificate of delivery upon which a portion of the claim is dependent is limited to denial of that portion of the claim dependent on the certificate of

delivery which is not supplied. The provision is changed to make this clear.

Also, pursuant to changes to other sections (see §§ 191.51(a) and 191.52(b)), certificates of delivery are required to be in the possession of the party to whom the merchandise covered in the certificate was delivered, and if that party is not the claimant, the claimant is required to obtain the certificate and provide it to Customs, if Customs requests the certificate under the procedures for ''perfecting'' a claim.

Comment: With respect to proposed § 191.11(a), it was requested that the words ''or drawback product'' be included in the tradeoff provision. A Customs ruling was cited in support of this request. With respect to proposed § 191.11(b), it was asserted that additional payments, including payments in kind, in relation to the exchanged merchandise, should be permitted. In regard to the problem of how much drawback should be allowed (when additional payments in kind are made), it was suggested that language could be inserted to limit drawback to the amount of duty paid on the imported barrels.

Customs Response: The statute involved (19 U.S.C. 1313(k)) expressly provides only for the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality. The Customs ruling cited by the comments held that a drawback claimant may identify a commercial lot of imported duty-paid merchandise as domestic merchandise for purposes of substitution drawback, 19 U.S.C. 1313(b), which is the provision interpreted in the ruling. This was adopted by Public Law 103–182, for purposes of § 1313(j) (by providing for the substitution of any other merchandise (whether imported or domestic) instead of duty-free or domestic merchandise). No similar change was made to § 1313(k), however. Accordingly, Customs concludes that no such interpretation was intended.

The comment relating to § 191.11(b) has merit and is adopted, in part. Customs must ensure that no more drawback than that attributable to the imported merchandise may be allowed. Also, the merchandise which is to be treated as the imported merchandise must be identified.

Accordingly, the second sentence of § 191.11(b) is changed to provide that the quantity of imported merchandise and domestic merchandise exchanged under this provision need not be the same, but that if the quantities are different, the lesser quantity shall be the quantity available for drawback. If a greater quantity of domestic merchandise than that of imported merchandise is received, the quantity identified for drawback shall be the quantity first received.

The restriction on payments other than payments in kind under § 191.11(b), however, is retained. Section 1313(k) provides for the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality, not for the use of domestic merchandise acquired for imported merchandise *and* a payment of something other than domestic merchandise of the same kind and quality.

Further, the use of the term ''exchange'' indicates an intent to provide for exchange of merchandise only (if the statutory provision was intended to provide for the ''purchase or exchange'' of the imported merchandise of the same kind and quality, Congress could have explicitly so provided (see, *e.g.,* 19 U.S.C. 1313(p)(2)(A)(ii) and (iv))).

Comment: With reference to proposed § 191.12 dealing with a claim filed under the wrong subsection of the drawback statute, it was advocated that this provision be rewritten to require Customs to notify the claimant as expeditiously as possible that the claim was filed under the wrong provision; it was also remarked that proposed § 191.12 was wrong in requiring a drawback claim to have to meet all the legal requirements of an alternative subsection of the drawback statute.

It was also pointed out that § 7 of Public Law 104–295, adding 19 U.S.C. 1313(r)(3) to the drawback law, allowing an extension of time for filing a drawback claim in the case of a major disaster, was not provided for in the proposed drawback regulations.

Customs Response: The legislative history to the statutory provision (19 U.S.C. 1313(r)(2)) is that the provision does not impose a requirement on Customs to investigate all alternatives in addition to the claimed basis before liquidating a drawback claim as presented (see H. Rep. 103–361, 103d Cong., 1st Sess. (1993), part I, at 131; Sen. Rep. 103–189, 103d Cong., 1st Sess. (1993), at 84). Accordingly to the Senate Report, § 1313(r)(2) was intended to allow a claimant to raise the alternative subsections by protest under 19 U.S.C. 1514. If an alternative provision of the drawback law is applicable, and the claimed provision is not applicable, it is clearly within the claimant's self-interest to bring to the attention of Customs the alternative provision (*i.e.,* so that the claimant may be paid drawback). Therefore, and consistent with the legislative intent stated in the Senate Report (see above) for § 1313(f)(2), § 191.12 is modified by the addition of a statement that the claimant may raise alternative provisions prior to liquidation or by protest. (It is in the interest of Customs and the public to provide that a claimant may raise alternative provisions prior to liquidation, as well as by protest, because this simplifies administration of the provision (by not requiring the filing and processing of a protest when the alternative provisions can be raised prior to liquidation).)

As the background to the proposed rule clearly stated, a claimant seeking to take advantage of this provision must qualify under the alternative subsection (see the example given in the background to the proposed rule). Customs may not waive the statutory requirement that a complete claim be filed within 3 years of export. Compliance with the alternative subsection is a statutory requirement (see 19 U.S.C. 1313(r)(2)).

It is recommended that claimants who are unsure of the correct subsection under which to claim drawback should ensure that their claims are filed promptly to allow compliance with the possible alternatives, and they should ensure that their claims comply with the possible alternatives.

Additionally, the comment pointing out that § 7 of Public Law 104–295, adding 19 U.S.C. 1313(r)(3) to the drawback law, is not implemented in the regulations has merit and is adopted, although in § 191.51(e)(2), and not in § 191.12.

Comment: It was suggested that proposed § 191.13 relating to packaging material be revised to make clear that all information required by the particular drawback provision under which the packaging material was being claimed had to be furnished for such material.

Customs Response: This suggestion has merit and is adopted, with the last sentence in § 191.13 being changed with the addition of the following at the end thereof: ''and all other information and documents required for the particular drawback provision under which the claim is made shall be provided for the packaging material''.

Comment: Regarding proposed § 191.14(a), the issue was variously raised about the applicability of the accounting procedures included in this section to merchandise exported to Canada or Mexico under the North American Free Trade Agreement (NAFTA), when the merchandise was exported in the same condition as imported. It was also requested that proposed § 191.14(a) make clear that the accounting procedures of this section

were not applicable in cases where the drawback law specifically authorized substitution. It was further asked that a cross reference to proposed § 191.2(h) defining direct identification drawback be included in proposed § 191.14(a).

Customs Response: The concerns presented regarding § 191.14(a) raise questions on the applicability of the accounting procedures provided for in § 191.14 to exportations to Canada or Mexico, given the enactment and implementation of NAFTA. In order to avoid confusion in this matter, the last sentence of § 191.14(a) as proposed, regarding the applicability of § 191.14 to exportations to Canada or Mexico under the NAFTA, is deleted. Applicability to such exportations will be governed by the law (see 19 U.S.C. 3333) and regulations promulgated thereunder.

The comment that the statement as to when this section is applicable (not in cases where substitution is permitted, citing specific subsections of 19 U.S.C. 1313) may be misinterpreted has merit and is adopted. The third sentence of § 191.14(a) is modified to make clear that § 191.14 is inapplicable in those situations in the cited subsections where substitution is allowed, but that the section does apply to situations in those subsections in which substitution is not allowed.

As for the comment suggesting a cross-reference to § 191.2(h), this comment has merit and is adopted. The second sentence of § 191.14(a) is modified accordingly. Additionally, a cross-reference to § 191.14 is added to § 191.2(h).

Comment: One comment asked that the words ''is established'' appearing in the last sentence of proposed § 191.14(b)(2) be modified to read ''can be established''. Otherwise, according to the comment, the provision might be read that each claimant had to seek a ruling establishing the inventory requirements contained therein.

Customs Response: The comment requesting the change of language in § 191.14(b)(2) has merit. However, instead of making the modification to the last sentence, the first sentence is modified to provide that ''[t]he person using the identification method must be able to establish * * *''. The language in the provision following this first sentence is interpretive and the described change to the first sentence resolves the problem raised by the comment.

Comment: It was recommended that the parenthetical language appearing in proposed § 191.14(b)(3) be revised or removed.

Customs Response: Customs agrees. The parenthetical appearing in § 191.14(b)(3) is deleted as unnecessary.

Comment: As to proposed § 191.14(b)(4), it was asserted that if the verification of inventory records supporting a drawback identification method required the ability of the inventory system to include drawback per unit, this requirement should be removed from the regulation. It was further declared that this provision presumed that all acceptable identification methods required accounting for all inputs and withdrawals from inventory, which was not true.

Customs Response: Regarding the requirement in § 191.14(b)(4) that the records supporting any identification method employed are subject to Customs verification, the intent of this requirement is to provide that the person using the identification method must be able to demonstrate how the records account for the drawback per unit of each receipt and withdrawal (in addition to the other things the records must account for). It is not required that the records themselves account for, or state, drawback per unit; rather that the person using the records must be able to demonstrate how drawback per unit can be established from the records.

It is correct that the low-to-high method with inventory turnover and the low-to-high blanket method may be used without accounting for domestic withdrawals; however if the method is subject to verification by Customs, the person using the method must be able to demonstrate, under generally accepted accounting procedures, how the records account for the required elements (including *all* withdrawals). That is, the integrity of the accounting method, as used by the person involved, is subject to verification. It is Customs position that no change to this provision is necessary.

Comment: Concerning proposed § 191.14(c) (1) and (2) addressing the first-in, first-out (FIFO), and last-in, first out (LIFO) accounting methods, it was recommended that after the word ''identified'' in each paragraph, the words ''by recordkeeping'' be added.

Customs Response: The recommendation that the words ''by recordkeeping'' be added after ''identified'' is adopted for § 191.14(c) (1) and (2), and in § 191.14(c) (3) and (4) as well. Additionally, examples are provided for each of the methods set forth therein.

Comment: With reference to proposed § 191.14(c)(3), it was declared that other accounting methods approved under other Customs rulings could be used if applicable.

One comment believed that direct identification under the unused merchandise drawback law, 19 U.S.C. 1313(j)(1), was a fiction; that the law did not require the type of accounting methods that were provided in this proposed section; and that, at the very least, high-to-low accounting as allowed in C.S.D. 84–82 should be reinstated.

Another comment suggested that Customs permit industries to submit proposals for acceptable accounting methods.

It was further asked that accounting methods in addition to low-to-high with inventory turnover (LIFO and FIFO) permit the claimant to omit accounting for domestic withdrawals when all receipts into inventory were of foreign origin.

Customs Response: Section 191.14 is intended to establish the accounting methods which may be used to identify merchandise or articles for drawback purposes, and is intended to be consistent with T.D. 95–61. Rulings issued prior to the effective date of these regulations may not be resorted to unless consistent with § 191.14 and T.D. 95–61. However, in order to make available to the public as many options for identification by recordkeeping as possible, while adhering to the principles of T.D. 95–61, § 191.14(c)(3) is modified by the addition of the so-called ''blanket'' low-to-high accounting method.

Under this long-established and used method (see, *e.g.*, 19 CFR 22.4(f) (1982 Customs Regulations) and C.S.D. 80–132), commingled merchandise or articles are identified first from the lot or lots of merchandise or articles with the lowest drawback attributable, then from the lot or lots with the next higher drawback attributable, and so on from lower to higher until all lots have been accounted for. The period from which withdrawals for export are identified is the statutory period for export under the kind of drawback involved (*e.g.*, 180 days under 19 U.S.C. 1313(p), 3 years under 19 U.S.C. 1313(c) and 1313(j), and 5 years otherwise under 19 U.S.C. 1313(i)). Thus, this method is similar to the low-to-high method with inventory turn-over method, except that instead of identifying the merchandise or articles with the lowest drawback attributable in the established average inventory period, merchandise or articles with the lowest drawback attributable in the statutory period for export are identified.

Members of the public should be aware that drawback requirements are applicable to withdrawn merchandise or

articles as identified (for example, if the merchandise or articles identified were attributable to merchandise which had been imported 2 years, 11 months prior to withdrawal and export or destruction did not occur until 2 months later, drawback under 19 U.S.C. 1313(j) would be denied (because that provision requires export or destruction within 3 years of import)).

Additionally, language is added to make it clear that, once a withdrawal for export is made and accounted for under the low-to-high method with established average inventory turn-over period, or under the ''blanket'' method, the merchandise or articles so withdrawn are no longer available for identification under the method.

Also, new examples, more clearly illustrative of the low-to-high methods (ordinary, with average inventory turn-over period, and blanket), and comparing the results of those methods, are added to § 191.14(c)(3).

Customs does have procedures under which industries may obtain from Customs a ruling, or an approved manufacturing drawback ruling, upon which it may rely (see 19 CFR part 177, for rulings, and the sample formats for specific manufacturing drawback rulings in Appendix B).

Regarding the suggestion that the ''high-to-low'' accounting method should be reinstated as a drawback accounting method, that would be inconsistent with T.D. 95–61, which revoked the published Customs ruling (C.S.D 84–82) permitting use of that method.

The requirement in certain of the drawback identification procedures for accounting for domestic withdrawals (with the exceptions described) is consistent with T.D. 95–61, in which Customs and Treasury stated the criteria for accounting methods used for identification of merchandise or articles for drawback purposes, and it is consistent with generally accepted accounting procedures.

As for the comment that the description of drawback under 19 U.S.C. 1313(j)(1) as direct identification drawback is a fiction, Customs disagrees. Under the plain language of this law, the imported merchandise must be exported or destroyed and drawback is payable on the amount of duty specifically paid thereon.

Comment: With specific regard to proposed § 191.14(c)(3)(i) describing the low-to-high inventory accounting method, it was reiterated that domestic (or nondrawback) input and domestic sales from inventory should not have to be taken into consideration.

Customs Response: As made clear in the modified regulation, all receipts and all withdrawals (including domestic withdrawals) must be accounted for when using the ''ordinary'' low-to-high method (low-to-high without an established average inventory turn-over period and not under the ''blanket'' method). Under the low-to-high method with average inventory turn-over period and the low-to-high blanket method all receipts into and all withdrawals for export are recorded in the accounting record and accounted for and domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available (under the methods) units of merchandise or articles.

Comment: With specific regard to proposed § 191.14(c)(3)(ii)(B) concerning the use of low-to-high accounting with an inventory turn-over period, it was stated that rather than providing that ''the longest average turn-over period * * * may be used'', this should provide instead that it ''must'' be used, and asked in this connection whether users of this method would have an option to choose periods.

Customs Response: This comment has merit and is adopted (although instead of the change proposed, the provision as redesignated (§ 191.14(c)(3)(iii)(C)) is modified by the addition of a parenthetical statement to make it clear that users of this method will have the option of using either the properly established average turn-over period for the merchandise or articles to be identified, or, if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the properly established average turn-over period which is longest).

Comment: With respect to proposed § 191.14(c)(4) concerning the average inventory method, a question was raised about the requirement that claimants wishing to use this inventory method obtain a ruling under 19 CFR part 177. In particular, it was remarked in this regard that the use of a weighted average as set forth therein was an officially recognized method of inventory management. Another comment asked that a practical example of how this inventory method would work be included under this provision.

Customs Response: The comment questioning why a ruling is needed for use of the average method and/or asking that an illustration of the average method be included in the regulations has merit and is adopted in § 191.14(c)(4). An example of an average method and provision for use of the average method, if in compliance with the applicable requirements of § 191.14 and the example, are included in the section.

When the average method is used the ratio of each receipt in inventory to all merchandise in the inventory at the time of the withdrawal is applied to the withdrawal, so that the withdrawal is comprised of proportionate quantities of each receipt and each receipt is correspondingly decremented. The reference to ''weighted averaging'' is removed, because weighting is unnecessary in this method.

As with other methods, when a person proposes a method which diverts from the methods as provided for in the regulations, a ruling must be obtained from Headquarters, or approval may be obtained in a specific manufacturing drawback ruling (see § 191.8 and Appendix B).

Comment: One comment asserted that the requirement in proposed § 191.14(d)(2)(i) that any accounting system approved by Customs be ''either revenue neutral or favorable to the Government'' was imprecise, and recommended the addition of the words, ''when compared to the method of separate storage and specific identification'' following the word ''Government'' in this provision.

Customs Response: Customs disagrees. The phrase, ''either revenue neutral or favorable to the Government'', was approved after notice and comment procedures pursuant to T.D. 95–61. The intent here is that the accounting methods for the identification of merchandise or articles for drawback purposes must meet the requirements in § 191.14(d)(2), as demonstrated by the methods provided for in § 191.14 (which now includes much more illustrative examples).

Subpart B

Comment: It was asked that a reference to drawback products be included in proposed § 191.21 concerning direct identification drawback, 19 U.S.C. 1313(a).

Customs Response: This request has merit and is adopted.

Comment: It was stated that proposed § 191.22(d) fell under the heading of substitution drawback and discussed designation by a successor; it was stated that this gave the impression that designations by successors were restricted to substitution claims.

Customs Response: This provision deals with successorship under 19 U.S.C. 1313(s), which concerns only substitution drawback under 19 U.S.C. 1313(b) and 19 U.S.C. 1313(j)(2). The concern raised here is addressed by making reference in this provision to

successorship under § 1313(s). Notably, the same change is also made with respect to § 191.32(f).

Comment: With respect to proposed § 191.22(e), concerning multiple products, it was advocated that Customs approval should not be required for manufacturing periods longer than a month. It was also stated that the use of an alternative to market value in determining the relative value of multiple products was unnecessary.

Customs Response: These comments are not adopted. As to the length of the manufacturing period, the provision follows current practice and provides for ''specific approval of Customs'' for a longer period.

With respect to the determination of relative value, it is provided in § 191.2(u) (as redesignated) that relative value is based on the market value of the products, or an alternative value approved by Customs. In other words, the default value is market value and if another value is to be used, Customs is to be advised (and such advice to Customs would be in the specific manufacturing drawback ruling of the company involved). Otherwise, a claimant would have to establish by its records that the value used is proper.

It is noted that consistent with the comments and response for proposed § 191.2(r), the heading for this paragraph is changed from ''By-products'' to ''Multiple products''.

Comment: As to proposed § 191.23(d)(1), it was asserted that the reference to the ''market value of the merchandise or products used in manufacture'' was not clear. A clarification of this language was requested.

Customs Response: The provision is modified to require records to show the market value of the merchandise or drawback products used to manufacture the exported or destroyed article, consistent with § 191.23(c).

It is also noted that a new § 191.23(d) is added providing for use of the ''abstract'' or ''schedule'' method of showing the quantity of material used or appearing in the exported or destroyed article. Thus, § 191.23(d) as proposed is renumbered as § 191.23(e).

Comment: It was requested that proposed § 191.24(a) concerning the certificate of manufacture and delivery be revised to make clear that such a certificate was required for each delivery of an article which had been manufactured or produced.

Customs Response: A certificate of manufacture and delivery is required for each delivery of an article which has been manufactured or produced (as defined in § 191.2(q), as redesignated) (this would be so whether the article has been subject to one or more than one manufacturing or production operations). The section is modified to make this clear.

Comment: It was believed that paragraphs (a) and (d) of proposed § 191.24 were in conflict (one required physical delivery, the other did not). It was suggested the provisions be reworded for consistency.

Customs Response: This comment has merit and is adopted. Section 191.24 (a) and (d) are revised accordingly.

Comment: Concerning the information required on a certificate of manufacture and delivery in proposed § 191.24(b), it was asked that the identity of the transferee and transferor, IRS number, and unique electronic number assigned to the manufacturing ruling be added.

Customs Response: The identity of the transferee and transferor is added, consistent with § 191.10, as § 191.24 (b)(1) and (b)(14), respectively. The comment as to the unique electronic number assigned to the manufacturing drawback ruling is also adopted in § 191.24(b)(2), although either the unique electronic number or the T.D. number may be provided (the latter, if the manufacturer or producer is operating under a specific manufacturing drawback ruling). The paragraphs of § 191.24(b) are renumbered accordingly.

Comment: It was stated, with respect to proposed § 191.24(b)(2), that the section inferred that the HTSUS numbers for designated merchandise from one certificate of manufacture and delivery should be transferred to a second certificate of manufacture and delivery. It was further stated here that, even if known, it would be a useless gesture to repeat import HTSUS numbers on the second certificate of manufacture and delivery, as they would not relate to the merchandise designated on the second certificate. It was asked that the provision clearly state that HTSUS numbers were not required on a second certificate of manufacture and delivery.

It was also noted that the language therein to the effect, ''* * * and applicable duty amounts, if applicable'' appeared redundant.

Customs Response: The reference to the redundancy of ''if applicable'' has merit. The second ''if applicable'' is deleted from this provision.

The concerns expressed in relation to HTSUS numbers have merit (in that the section does not make it clear that the HTSUS numbers required are those for the imported merchandise, and not for the manufactured or produced merchandise).

Insofar as the comment suggesting that import HTSUS numbers should not be repeated on a second certificate of manufacture and delivery, this comment is not adopted because in many cases involving more than one certificate of manufacture and delivery for sequential manufacturing or production operations, the merchandise and/or drawback products covered by one certificate may not be completely covered by the other certificate(s).

Comment: It was observed that, in proposed § 191.24(b) (3) and (4), the words ''if applicable'' did not pertain to this information; the dates received and used in manufacture should always be supplied.

Customs Response: This comment has merit and is adopted. Customs is aware of no situation in which the information provided for in the subsections would not be applicable (particularly in view of the changes made to the requirement for a certificate of manufacture and delivery in the principal-agent situation).

Comment: It was stated that proposed § 191.24(c) was unclear insofar as it required the filing of a certificate of delivery with the drawback claim unless such certificate was ''previously filed''. The phrase ''previously filed'' was found to be vague. The previous filing may be at a different port. It was recommended that information as to the port and date of filing along with a copy of the certificate be submitted therewith, if the original certificate was not filed with the claim.

Customs Response: This comment has merit and is adopted (although it is adopted in § 191.51(a)(2), and not in this provision).

Comment: With respect to proposed § 191.24(d) concerning the effect of a certificate of manufacture and delivery, it was asked whether there would be a place on the certificate of manufacture and delivery to indicate whether drawback rights were being transferred and, if not, how an issuer would so indicate on the certificate. It was also stated that this section should address the ''effect'' of internal certificates of manufacture and delivery in order to document multiple manufacturing processes performed by one manufacturer.

Customs Response: The comment regarding the effect of certificates of manufacture and delivery is addressed by the changes made to the requirements for a certificate of manufacture and delivery (*i.e.*, such a certificate is only used when drawback rights are transferred and is not used in

a transfer from an agent to the principal).

Therefore, the provision is modified accordingly (*i.e.*, a certificate of manufacture and delivery establishes the transfer of an article manufactured or produced under 19 U.S.C. 1313 (a) or (b), identifies that article as an article to which a potential right to drawback exists, and assigns the drawback rights for the article from the transferor to the transferee). For the same reason, the example referring to principal-agency is removed.

The comment stating that the provision should address the ''effect'' of internal certificates of manufacture and delivery (internal to the company involved) is not adopted; since certificates of manufacture and delivery always transfer drawback rights, a certificate of manufacture and delivery would not be appropriate in such a situation (because the same legal person transfers and receives the merchandise).

Comment: With respect to proposed § 191.25(a), it was asked what would happen if the manufacturer did not want to divulge the abstract details to the claimant. It was recommended here that the current practice be followed—*i.e.*, the manufacturer would file the certificate of manufacture and delivery and advise the claimant of the certificate number and the port where filed and the claimant could designate against the certificate.

Customs Response: This comment is not adopted. The procedure suggested by the comment would create an untenable administrative burden in Customs processing of drawback claims and of accelerated payment claims.

(It is noted that § 191.25 as proposed is now redesignated as § 191.26, due to the addition of a new § 191.25 covering the destruction of articles manufactured or produced for drawback; and, as such, §§ 191.26 and 191.27 as proposed are redesignated as §§ 191.27 and 191.28, respectively.)

Comment: Regarding proposed § 191.25(b) addressing recordkeeping requirements for substitution manufacturing drawback, it was stated that the requirement that a manufacturer claiming drawback under 19 U.S.C. 1313(b) establish the facts in proposed § 191.25(a)(1) (ii) and (iii) was incorrect, since under substitution, the manufacturer only had to provide the quantity and kind of merchandise used or appearing in the manufactured articles. It was observed that proposed § 191.25(a)(1) (ii) and (iii) related specifically to drawback under 19 U.S.C. 1313(a), and should be removed from the reference in proposed § 191.25(b).

Customs Response: This request has merit and is adopted.

Comment: It was observed that the words ''or destroyed'' should be inserted between the words ''exported'' and ''articles'' in proposed § 191.25(b)(2). Also, it was noted therein that the term ''(or appearance in)'' should be ''or appearing in''.

Customs Response: This comment has merit and is adopted.

Comment: Regarding proposed § 191.25(c) dealing with valuable waste, it was asserted that the statement that ''the quantity of merchandise identified or designated * * * shall be based on the quantity of merchandise actually used * * * reduced by the amount of merchandise which the value of the waste would replace'' was incorrect and misleading, in that a claimant might think that it need only designate the reduced quantity (after the waste replacement). It was recommended that this language be revised.

It was also suggested that it be clarified as to which merchandise value was subject to reporting and recordkeeping with regard to 19 U.S.C. 1313(a) versus 19 U.S.C. 1313(b).

Customs Response: These comments have merit and are adopted. Section 191.26(c) as redesignated is revised accordingly.

Comment: Concerning the requirement in proposed § 191.25(e) that the claimant retain the certificate of delivery if the related merchandise was not imported by the manufacturer, it was asserted that this provision would be impossible for the claimant to comply with if the claimant was a party other than the manufacturer and the manufacturer was a party other than the importer because the claimant would never have received the certificate of delivery (the certificate would be from the importer to the manufacturer). An objection was also raised here as to the use of the word ''designated'' in the phrase ''designated on a certificate of delivery for manufacturing drawback'' because designation inferred substitution. It was advocated that proposed § 191.25(e) either be deleted or revised.

Customs Response: The assertion that this provision would be impossible to comply with when the claimant is a party other than the manufacturer, and the manufacturer a party other than the importer, raises a valid concern. The provision is deleted, consistent with the changes to §§ 191.10 (c) and (e), 191.51(a), and 191.52(b).

Under the previously cited provisions, certificates of delivery are required to be in the possession of the party to whom the merchandise covered in the certificate is delivered, and if that party is not the claimant, the claimant is required to obtain the certificate and provide it to Customs, if Customs requests the certificate under the procedures for ''perfecting'' a claim.

With the deletion of paragraph (e) of § 191.26 as redesignated, paragraphs (f) and (g) thereof are themselves redesignated as paragraphs (e) and (f), respectively. Also, the example in § 191.26(e)(1), as redesignated, is modified, consistent with the restriction in 19 U.S.C. 1313 (a) and (b) on the use in the United States after manufacture of articles manufactured or produced under those provisions.

Comment: In regard to proposed § 191.25(f)(2)(iii) dealing with the export summary procedure, it was recommended that the clause ''if known at the time of entry'' be added at the end of the requirement that ''[e]ach claimant shall identify in the chronological summary the name of the other claimant(s) and the component product for which each will independently claim drawback''. It was observed here that one claimant might be unaware of other claimants and to which component part they could claim.

Customs Response: The request has merit and is adopted.

Comment: With reference to proposed § 191.25(g) dealing with recordkeeping requirements for manufacturing drawback, it was observed that this section provided a reasonable reflection of the various records required to establish entitlement to the kinds of drawback involved.

However, the concern was expressed about the possible confusion resulting from the 3-year (from date of payment) record-retention period for drawback and the general 5-year record retention period for other Customs purposes. It was suggested that greater clarity was needed here, because a drawback claimant could think it could dispose of records after the 3-year period and be subject to penalties for disposing of them before the termination of the 5-year general period (if the records were also subject to the 5-year record retention period).

It was further recommended that the final rule here should expressly state whether all drawback-related records had to be retained for a minimum of 5 years from the date of entry of the imported merchandise, or 3 years from the date of payment of the related drawback claim, or, alternatively, a detailed, comprehensive list of records and the time periods for retaining each one should be provided.

It was also noted that in the background of the proposed rule,

Customs had stated that drawback records ought to be maintained until the liquidation of the drawback entry became final. It was asserted in this regard that if more than 3 years had passed since payment, but the subject drawback claim was still not finally liquidated, and a question regarding documents arose, Customs should presume that the claimant satisfied the drawback documentation requirements as long as the claimant had been approved under the drawback compliance program.

Furthermore, it was suggested that, in the case of an audit commenced more than 3 years after payment of a drawback claim, Customs should not be able to recover any drawback paid, if a relevant supporting record was no longer in existence.

It was additionally asked that a claimant be permitted to maintain the required documentation in paper or electronic form, either of which could be used to satisfy the recordkeeping requirements, and where a party was unable to produce necessary documentation, including records that were in the possession of another party or an original signature from a carrier, Customs should allow that party to present alternative documentation.

It was stated that a reference to 19 U.S.C. 1508(c)(3) should be included in proposed § 191.25(g) concerning the time period for the retention of records.

Customs Response: The comment suggesting more clarity as to the time period for keeping drawback records (3 years from payment) versus other records provided for in 19 U.S.C. 1508, which are generally required to be retained for 5 years from the date of entry, filing of a reconciliation, or exportation, as appropriate, is adopted. Paragraph (g) of § 191.25, as proposed (now redesignated as § 191.26(f)), is modified to clarify that the 3-year time period provided for therein is for drawback purposes, and that the same records may be required, for other purposes (with a citation to 19 U.S.C. 1508), to be retained for a different time period.

In reference to the statement in the background that drawback records ought to be maintained until liquidation of the drawback entry becomes final, the comment is correct that the applicable statutory provision (as well as the regulations based thereon) require retention for 3 years from the date of payment.

It is Customs position that the effect of a claimant not having records prior to final liquidation but after termination of the 3-year period, as well as the effect of an audit commenced after termination of this period, must be determined on a case-by-case basis.

In regard to the comment that a claimant be permitted to maintain the required documentation in paper or electronic form, a definition of ''records'' has been added to § 191.2, to the effect that records include electronically generated or machine readable data normally kept in the ordinary course of business.

A reference to 19 U.S.C. 1508(c)(3) is added to § 191.26(f) as thus redesignated.

Comment: It was believed that a conflict was apparent in proposed § 191.26(b)(3) regarding the phrase ''importation of the designated merchandise''. It was remarked that there was no date of importation for a drawback product, which could also be designated for drawback.

Customs Response: The comment has merit. The following phrase is added at the end of paragraph (b)(3) of this section (§ 191.27 as redesignated): '', or within 5 years of the earliest date of importation associated with a drawback product''.

Comment: It was asked if the exporter could waive its right to drawback in proposed § 191.27 by means of a blanket letter covering extended time frames.

Customs Response: The comment referring to a ''blanket'' letter for certification by the exporter (or destroyer) assigning drawback rights has merit. Section 191.28 as thus redesignated is revised accordingly.

Subpart C

Comment: In proposed § 191.31(c), relating to when merchandise would be considered to be used for purposes of the unused merchandise drawback law (19 U.S.C. 1313(j)(1)), it was variously recommended that the words ''In general'' be deleted from the beginning of the first sentence thereof, and that the sentence be revised to be more specific, or be deleted entirely.

Customs Response: The comment concerning the use of the phrase ''In general'' at the beginning of the first sentence of § 191.31(c) is addressed by changing the heading of the provision to read ''Operations performed on imported merchandise.'', by deleting the first sentence, and by adding to the second sentence as proposed the phrase, ''In cases in which an operation or operations is or are performed on the imported merchandise,''. Notably, the same changes are also made with respect to § 191.32(e).

Further definition of the restriction on ''use'' in 19 U.S.C. 1313(j) will be addressed on a case-by-case basis by ruling.

Comment: In proposed § 191.32(c), concerns were raised essentially as to how Customs would interpret and apply the four criteria listed therein in making commercial interchangeability determinations.

It was stated that by listing the four factors to be used in making such determinations, Customs was creating a ''bright line'' test in contravention of the legislative intent underlying the statute.

Customs Response: The criteria used by Customs in making commercial interchangeability determinations are adopted from the legislative history of 19 U.S.C. 1313(j)(2). In order to better implement legislative intent, § 191.32(c) is modified to provide that in determining commercial interchangeability, Customs shall evaluate the critical properties of the substituted merchandise, and, pursuant to that evaluation, Customs consideration will include, but not be limited to, the factors listed in the legislative history.

Further definition of commercial interchangeability will be on a case-by-case basis, by obtaining a determination as provided in § 191.32(c). Procedures for contesting specific rulings are found in 19 U.S.C. 1625 and 19 CFR part 177.

Section 191.32(c) is modified to make it clear that the determination of commercial interchangeability may be obtained by a formal ruling or submission of all required documentation with each individual claim, while the nonbinding predetermination is just that, nonbinding and a pre-determination, and, therefore, is not sufficient to obtain a *determination* of commercial interchangeability. Required documentation for commercial interchangeability determinations includes competent evidence of the basis on which the merchandise is claimed to be exchanged.

For example, if merchandise meeting a range of criteria is claimed to be exchanged in the industry, contracts evidencing that fact should be provided.

Comment: As concerns the person entitled to claim drawback set forth in proposed § 191.33(a), it was suggested that the waiver of drawback by the exporter be permitted by a blanket letter.

Customs Response: The suggestion regarding a blanket certification by the exporter (or destroyer) assigning drawback rights is adopted. Section 191.33(a)(2) is revised accordingly. In addition, § 191.33(a)(2) is changed to provide that the certification must be filed at the time of, or prior to, filing of the claim(s) covered by the certification.

Comment: It was requested, under proposed § 191.33(b)(2), that blanket waiver letters also be authorized.

Customs Response: Customs agrees. Section 191.33(b)(2) is revised accordingly. Furthermore, § 191.33(a)(2) is changed to provide that the certification must be filed at the time of, or prior to, filing of the claim(s) covered by the certification.

Comment: In the context of proposed § 191.33(b), it was extensively argued, citing the statute, its legislative history, as well as case law, that multiple substitutions of merchandise were permissible under the substitution unused merchandise drawback provision, 19 U.S.C. 1313(j)(2). It was contended that, by permitting an intermediate party to claim drawback in proposed § 191.33(b), Customs itself provided for multiple substitutions. It was asserted that multiple substitutions were allowable under § 1313(j)(2), in the case of a successorship thereunder, pursuant to 19 U.S.C. 1313(s). One comment said that the matter of multiple substitutions under § 1313(j)(2) should be specifically addressed in the regulations.

Customs Response: Customs is bound by the current statutory language in 19 U.S.C. 1313(j)(2). Under the current statute (19 U.S.C. 1313(j)(2)), the other (substituted merchandise) must be commercially interchangeable with the imported merchandise, exported or destroyed within 3 years after import of the imported merchandise, and before exportation or destruction, not be used in the United States and be in the possession of the drawback claimant.

The drawback claimant (under § 1313(j)(2)(C)(ii)) must be the importer of the imported merchandise or have received from the importer (and person who paid any duty) a certificate of delivery transferring to the claimant the imported merchandise, commercially interchangeable merchandise, or any combination thereof (and the transferred merchandise will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise), and upon exportation or destruction of the other merchandise, drawback shall be refunded.

In the first case (when the claimant is the importer of the imported merchandise), no multiple substitutions are authorized by the statute, since the other merchandise must be in the possession of the claimant, and it (the other merchandise) must be exported (*i.e.*, no matter how many transfers or substitutions of the merchandise which becomes the ''other'' merchandise occur prior to receipt by the claimant of the merchandise, what is required to be exported is the ''other'' merchandise which the claimant must have possessed).

In the second case (when the claimant receives from the importer and duty payer a certificate of delivery), no multiple substitutions are authorized by the statute since the other merchandise must be in the possession of the claimant and it (the other merchandise) must be exported (*i.e.*, if the ''other'' merchandise is treated as the imported merchandise, so that it, or commercially interchangeable merchandise, could be transferred to another party, the transferror would not be the importer and duty payer, as required by the statute).

Customs position in this regard is consistent with the legislative history of the statute (see also Senate Report 103–189, page 182, declaring that § 1313(j)(2) would allow exporters to claim drawback on imported merchandise, or other domestic or imported merchandise that is substituted *for the imported merchandise).*

As for the contention that Customs, in the proposed provision, by permitting an intermediate party to claim drawback under § 1313(j)(2), provides for multiple substitutions, Customs disagrees. Customs proposed interpretation of the statute, authorizing multiple transfers and claims by intermediate parties (under the waiver and assignment, and certification procedures) is based on the provision in § 1313(j)(1) as to who may claim drawback (the exporter (or destroyer) or, with endorsement, the importer or *any intermediate party*), and the legislative history (H. Rep. 103–361, 103d Cong., 1st Sess. (1993), part I, at 129; Sen. Rep. 103–189, 103d Cong., 1st Sess. (1993), at 82, noting that, due to a recent court decision, the provision also permitted an exporter or destroyer to endorse the right to claim drawback to the importer or any intermediate party).

Section 1313(j)(2) does not specifically authorize the delivery ''directly or indirectly'' of the certificate of delivery for the imported merchandise, commercially interchangeable merchandise, or any combination thereof, so the proposed construction of the statute, based on the allowance in the regulations for an intermediate party to claim drawback (with the required waiver and assignment, and certification) must fail.

As for the comment that 19 U.S.C. 1313(s) permits multiple substitutions under § 1313(j)(2), Customs disagrees. Under § 1313(s), in pertinent part, a drawback successor (meeting the requirements of that section) may designate as the basis for drawback on merchandise possessed by the drawback successor after the date of succession imported merchandise, commercially interchangeable merchandise, or any combination thereof for which the predecessor received, before the date of succession, from the importer and duty payer a certificate of delivery transferring to the predecessor such merchandise.

In other words, under § 1313(s), the predecessor receives a certificate of delivery for the ''other'' merchandise and the successor possesses the merchandise. Section 1313(j)(2) requires the party claiming drawback to both possess the ''other'' merchandise and to have received from the importer and duty payer a certificate of delivery for the imported merchandise, commercially interchangeable merchandise, or any combination thereof. Thus, § 1313(s) allows drawback when these parties are different and a permitted succession occurs, it does not allow a further substitution, nor does the legislative history have any indication of an intent to add such substantive rights in the successorship situation.

The comment that the restriction on multiple substitutions should be provided for in the regulations themselves has merit and is adopted. Section 191.33(b)(1)(iii) is revised accordingly.

Comment: It was suggested, with respect to proposed § 191.33(b)(1)(ii), that the words ''or destroys'' should be inserted following the phrase, ''commercially interchangeable merchandise, and exports'' and before the phrase, ''such transferred merchandise'', and the words ''or destroyer'' should be inserted following the phrase, ''that exporter'', and before the phrase, ''shall be entitled to claim drawback''.

Customs Response: The comment has merit and is adopted.

Comment: It was recommended, in proposed § 191.34(a)(1), that instead of certifying on the certificate of delivery that the party did not use ''the exported or destroyed merchandise'', the requirement should be for a certificate that the party did not use ''the transferred merchandise''. It was noted that the merchandise, at the time of the certification, would not yet be exported or destroyed.

Customs Response: The comment has merit and is adopted.

Comment: With respect to proposed § 191.34(a)(2), it was stated that instead of requiring the drawback claimant to ''retain the certificate for submission to Customs as part of the claim, if requested'', the requirement should be

to ''retain the certificate for submission to Customs when requested''.

Customs Response: Consistent with § 191.51, certificates of delivery are not ''part'' of claims but support claims, so that if Customs requests a certificate of delivery upon which a drawback claim is dependent and the certificate is not provided, the claim is not rejected but, instead, is denied. Since a certificate of delivery is not ''part'' of a complete claim (as the regulation is modified), providing a certificate of delivery upon Customs request is in the nature of ''perfecting'' a claim. Notably, this is added as one of the instances of perfection provided in § 191.52(b), and may be done outside the 3-year time for filing a complete claim.

The denial of a drawback claim for failure to supply, in response to Customs request, a certificate of delivery upon which part of the claim is dependent is limited to denial of that portion of the claim dependent on the certificate of delivery which is not supplied. The provision is changed to make this clear.

Also, pursuant to changes to other sections (see §§ 191.51(a) and 191.52(b)), certificates of delivery are required to be in the possession of the party to whom the merchandise covered in the certificate was delivered, and if that party is not the claimant, the claimant is required to obtain the certificate and provide it to Customs, if Customs requests the certificate under the procedures for ''perfecting'' a claim. The provision is changed to make this clear.

Comment: With respect to proposed § 191.34 (a) and (b) generally, it was contended that these provisions imply that a certificate of delivery which directly identified imported merchandise could not be used to transfer merchandise to a party who claimed drawback under 19 U.S.C. 1313(j)(2). It was asserted that the opposite was true, and that proposed § 191.34(a) should specifically state that a directly identified certificate of delivery to a party may be subject to a § 1313(j)(1) or 1313(j)(2) claim by that party.

Customs Response: The intent of these provisions is to make clear the requirements for and effect of certificates of delivery. Section 191.34(a) does not preclude the use of a certificate of delivery for the imported merchandise (and not substituted merchandise) which then may be the subject of a further delivery (under substitution procedures under 19 U.S.C. 1313(j)(2)), nor does § 191.34(b) preclude transfers (but not substitutions) before and/or after the substitution-transfer. The provisions are changed to make this clearer.

Further, the provisions are changed to reflect that the certificate of delivery is required to be retained by the person to whom the merchandise was delivered (and is not a ''part'' of a drawback claim), and must be provided to Customs by the claimant upon a request to ''perfect'' the claim.

Comment: It was observed that proposed § 191.34(b) did not contain a provision dealing with intermediate transfers.

Customs Response: The comment has merit and is adopted. A sentence similar to the last sentence of § 191.34(a) is added to § 191.34(b).

Further, in the penultimate sentence of § 191.34(b) as proposed, the words ''as imported merchandise for the purpose of manufacturing drawback'' are deleted and replaced with ''for any other drawback purposes''.

Comment: It was requested that the procedures for the waiver of prior notice set forth in proposed § 191.35 for purposes of 19 U.S.C. 1313(j) also be employed for purposes of drawback under 19 U.S.C. 1313(c). It was further suggested that the form referred to here and in other sections as ''Notice of Intent to Export'' or ''Notice of Intent to Export or Destroy'' be renamed as the ''Notice of Intent to Export, Destroy or Return Merchandise to Customs Custody''.

Customs Response: The comment, suggesting that the provision for waiver of prior notice should be extended to drawback under 19 U.S.C. 1313(c), is not adopted. The statutory provisions are different. Under § 1313(c) the merchandise is required to be returned to Customs custody for exportation or destruction under Customs supervision; there is no such requirement in 19 U.S.C. 1313(j) for the return to Customs custody. The form for export or destruction or return to Customs custody, however, is renamed, as stated above.

Comment: It was recommended that the information required on the notice of intent in proposed § 191.35(b) include, in addition to the name and telephone number of a contact person, the mailing address, fax number and, if available, the e-mail address.

Also, it was stated that the phrase, ''* * * the bill of lading number, if known'', as set forth therein, was unnecessary, since the bill of lading number would not be known prior to export of the merchandise (the bill of lading is numbered upon preparation of the Outward Manifest).

Customs Response: The recommendation that other information regarding the contact person should be stated has merit and is adopted. The comment suggesting deletion of the requirement for the bill of lading number, if known, is not adopted (*i.e.*, the requirement is subject to the caveat ''if known'').

Comment: It was stated, with respect to proposed § 191.35(c) that the regulations on the process of filing the notice of intent to export should provide the ability to file notice to Customs electronically. Furthermore, it was contended that Customs should be required to notify the party named in proposed § 191.35(b) by telephone, within 2 working days, and that a telephone contact should be required as well.

Customs Response: The comment that the regulations should provide for electronic filing of the ''Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback'' has merit and is adopted. This is accomplished by the addition of a definition of ''filing'' in § 191.2. The comment (that the party should be notified by telephone) is not adopted. Customs believes that the existing requirements in § 191.35(c) are adequate as regards the examination of merchandise to be exported or destroyed.

Comment: Referring to the time and place of examination in proposed § 191.35(d), it was mentioned that, for consistency, the notice of the decision to examine provided for in this provision should be ''in writing''.

Customs Response: The suggestion that notice of the decision to examine should be in writing has merit, although the requirement for notice in this regard is in § 191.35(c), not (d). Thus, the requested modification is made to § 191.35(c).

Comment: It was observed that inclusion of a requirement in proposed § 191.36(a)(1)(i) for the estimated number of claims to be filed under this procedure, and when they would be filed, would assist Customs in maintaining control over the filing of the claims under this provision.

Customs Response: A requirement to this effect is included in § 191.36(a)(1)(i).

Comment: It was stated that the IRS number (9-digit number plus two character suffix) was needed in proposed § 191.36(a)(1)(i) (A) and (B).

Customs Response: The comment has merit and is adopted.

Comment: A question was presented as to the meaning of the phrase, ''Export period covered by this application'' appearing in proposed § 191.36(a)(1)(i)(C). It was asked

whether the term ''export period'' included past as well as future export activity.

Customs Response: ''Export period covered by this application'', as used in § 191.36(a)(1)(i)(C), means the time beginning with the first export for which prior notice was not given and ending with the time of the last export for which such notice was not given. Section 191.36 deals with merchandise which *has* been exported without the filing of a notice of intent to do so. This provision, therefore, covers past transactions.

Comment: There was a recommendation that the words ''and/or'' be added to proposed § 191.36(a)(1)(iii)(A) (*1*) and (*2*), on the basis that a claimant might not have ''laboratory records'' as such.

Customs Response: The comment has merit and is adopted, with the additional statement that the requirements for the records are ''as applicable''.

Comment: It was contended that the restriction, in proposed § 191.36(a)(2), of retroactivity for waivers of prior notice to a ''one-time'' use by the claimant was unfair and might not be legal.

It was also stated that the one-time restriction should be on a product basis, because, with the diversification of business today, a firm could have several business areas that operated independently and could discover retroactive unused merchandise drawback scenarios at different times. It was further observed that the phrase ''unless good cause is shown'' afforded Customs too much discretion and could lead to capricious judgments.

Customs Response: The one-time restriction is retained in § 191.36(a)(2). Because this provision may be used for all exports occurring prior to approval by Customs of the application, a reasonably prudent drawback claimant should not be harmed (*i.e.*, once aware of the requirement for prior notice of intent to export or destroy, such notice should be given, and under this procedure past exports may qualify for drawback).

It is Customs position that the phrase ''unless good cause is shown'' as used in § 191.36(a)(2) gives proper discretion to the Customs officers responsible for administering the provision.

Comment: In relation to proposed § 191.36(c), the suggestion was made that the words ''receipt of the application of'' should be inserted immediately after the words ''within 90 days of'', so that the provision did not require Customs to make its decision to approve or deny and then inform the applicant within 90 days of that decision. It was further stated in this regard that Customs should have to justify and state its reasons for the ''inability to approve, deny or act on the application''. It was observed that this could be accomplished by the addition of ''and the reason thereof'' at the end of this section.

Customs Response: The comments have merit and are adopted.

Comment: It was asserted that the second sentence in proposed § 191.36(e) should be: ''If the applicant seeks waiver of prior notice under 191.91, reference should be included that application was submitted under this section and whether or not it was approved.''.

Customs Response: The comment has merit and is adopted (but by a change to § 191.91(b)(2)(ii) stating that the statement as to action on previous waiver requests includes one-time waivers under § 191.36).

Comment: It was believed that proposed § 191.37 provided no guidance as to the specific document type and format that the claimant or other recordkeeper had to maintain.

Concern was also expressed here that possible confusion could result from the 3-year (from date of payment) record-retention period for drawback, and the general 5-year record retention period for other Customs purposes. More clarity was requested.

It was further stated that if more than 3 years had passed since payment but a drawback claim was not finally liquidated and a question regarding documents arose, Customs should presume that the claimant had satisfied the drawback documentation requirements as long as the claimant was approved under the drawback compliance program.

It was additionally suggested that a claimant should be permitted to maintain the required documentation in paper or electronic form.

Customs Response: Customs plans to make available to the public, from the field drawback offices, descriptions, with examples, of the documents referred to in this section (now redesignated as § 191.38, due to the addition of a § 191.37 regarding destruction).

Section 191.38(a) as redesignated is also modified to make it clear that the 3-year time period provided for therein is for drawback purposes, and that the same records may be required, for other purposes, to be retained for a different time period. To this end, a citation to 19 U.S.C. 1508 is also added to redesignated § 191.38(a).

While records must be retained for 3 years from the date of payment of a drawback claim, it is Customs position, as previously stated, that the effect of a claimant no longer having records following this period must be determined on a case-by-case basis, when the related drawback claim has not yet been finally liquidated.

Concerning the particular format in which records may be kept, as also previously noted, Customs has determined to include a definition in § 191.2 for the term ''records'' based on the definition of this term appearing in 19 U.S.C. 1508.

Comment: It was observed that a reference to the destruction of merchandise should be included in proposed § 191.37(b)(2), and that a section should be added to subpart C addressing the destruction of merchandise.

Customs Response: The comment that § 191.38(b)(2) as redesignated should also include a reference to destruction has merit and is adopted. Also, as already noted, a new § 191.37 is added to subpart C addressing the destruction of unused merchandise under Customs supervision. A similar section regarding destruction for manufacturing drawback has likewise been included in subpart B.

Subpart D

Comment: It was asked, with reference to proposed § 191.41, whether taxes or fees are eligible for drawback on rejected merchandise under 19 U.S.C. 1313(c).

Customs Response: Section 1313(c)) authorizes drawback on ''duties''. However, this comment indirectly raises the question of the applicability of 26 U.S.C. 5062(c) (drawback on distilled spirits, wines, or beer, which are unmerchantable or do not conform to sample or specifications). To alert the public to the possible application of that provision, a parenthetical reference to subpart P dealing with that type of drawback is added to § 191.41.

Comment: It was observed that a close reading of proposed § 191.42(c), (e), and (f) revealed that the ''Notice of Intent to Export/Destroy'' form was to be used not only as a notice of intent to export or destroy merchandise, but also as a notice of intent to return merchandise to Customs custody. As such, it was suggested that the form be appropriately renamed.

It was further stated that, by providing, in proposed § 191.42(e) and (f), certain situations in which merchandise would ''be deemed'' to have been returned to Customs custody, these provisions indicated that the merchandise might not actually have been returned to Customs custody. It was advocated that this should be

reconciled with the wording in proposed § 191.42(a) providing that the claimant had to return the merchandise to Customs custody.

In addition, for consistency, it was requested here that each time the terms ''exported'' or ''exportations'' were used in proposed § 191.42, the terms ''destroyed'' and ''destructions'' should be added.

Customs Response: The request regarding the use of ''destroyed'' or ''destruction'' with the corresponding exportation terms has merit and is adopted, and, as previously noted, the form is re-named.

Customs, however, sees no need for any change to § 191.42(a). Since § 191.42(e) and (f) provide that merchandise is ''deemed'' to have been returned to Customs custody in the situations provided for, the requirement for return to Customs custody in § 191.42(a) is met.

Comment: It was requested that the waiver of prior notice and the one-time retroactive claim procedures provided for unused merchandise in proposed § 191.36 be made available for drawback under 19 U.S.C. 1313(c) and for destroyed merchandise, and that if this were done, merchandise exported or destroyed under these procedures should be ''deemed'' to be ''returned to Customs custody'' or destroyed ''under Customs supervision''.

Customs Response: The comment suggesting that waiver of prior notice and the one-time waiver procedures be made available for drawback under 19 U.S.C. 1313(c) is not adopted. In particular, as previously pointed out, 19 U.S.C. 1313(c) and 1313(j) are different statutory provisions. Under § 1313(c), there must be a return to Customs custody for exportation. There is no such requirement in § 1313(j).

Comment: It was recommended that the information required in the notice under proposed § 191.42(d) should include, in addition to the name and telephone number of a contact person, the mailing address, fax number and, if available, the e-mail address.

Customs Response: Customs agrees, and § 191.42(d) is changed to provide for this additional information.

Comment: It was asked that the notification given by Customs to examine merchandise under the first sentence in proposed § 191.42(e) be in writing.

Customs Response: This comment has merit and is adopted.

Comment: A concern was expressed in relation to proposed § 191.42(i), in that the provision appeared to require the exportation of rejected merchandise under Customs supervision.

Customs Response: The comment raises a valid concern. The statute does not require exportation to be under Customs supervision. The phrase, ''under Customs supervision'', is thus deleted from this section. Also, a parenthetical reference to subpart G is added to § 191.42(i).

Comment: In proposed § 191.44, it was suggested that the reference to ''§ 191.71(a)'' be changed to ''191.71''.

Customs Response: This comment has merit and is adopted.

Subpart E

Comment: It was asserted that, in proposed § 191.51, a complete claim should contain a calculation sheet.

Customs Response: The provision in § 191.51(b) does require the correct calculation of drawback due, under which claims exceeding 99% of the duties will not be paid until corrected, and claims for less than 99% will be paid as filed, unless the claimant amends the claim. This provision is modified to provide for those situations when drawback is 100% of duties.

In addition, it is noted that the provision on the time for filing a complete claim (in proposed § 191.52(a)(2)) is moved to § 191.51, as paragraph (e), and titled ''Time of filing''. The provision in 19 U.S.C. 1313(r)(3), providing for an extension to the time for filing a drawback claim when a claimant establishes that it was unable to file the drawback claim because of a major disaster is also included in § 191.51(e).

Comment: A question was posed, in connection with proposed § 191.51(a)(1), as to why drawback offices still required a coding sheet for disk/electronic filings, and would those offices be informed to eliminate this requirement.

Customs Response: As set forth in § 191.51(a)(1), a coding sheet is required, unless the data is filed electronically.

Comment: Concern was expressed about the requirement in proposed § 191.51(a)(2) that certificates of delivery be in the possession of the claimant at the time of filing the claim.

Customs Response: Certificates of delivery must be in possession of the party to whom the merchandise is delivered. Section 191.51(a)(2) is changed to so state.

Comment: A question was presented regarding the statement in proposed § 191.51(b) that claims for less than 99 percent would be paid as filed, unless the claimant amended the claim. It was advocated that Customs make an additional refund in such cases on its own.

Customs Response: Customs recognizes the interest of a claimant in being able to exercise caution by under-claiming. Also, adoption of the procedure suggested by the comment would create an untenable administrative burden for Customs in its processing of drawback claims.

Comment: With respect to proposed § 191.51(c), it was suggested that the effective dates for providing HTSUS numbers on drawback claims be included in the regulations themselves. It was also contended that if a certificate of manufacture and delivery was identified or designated, the claimant should be exempt from providing the HTSUS numbers on the related claim. As such, it was requested that the phrase, ''and/or the certificate of manufacture and delivery'', be deleted from proposed § 191.51(c).

A concern was also expressed that proposed § 191.51(c) might imply that for exports, if Schedule B commodity numbers were used, the entire ten-digit number would be required. It was advocated that it should be specified here that the Schedule B number was limited to 6-digits.

A question was raised as to what the effect of incorrect HTSUS numbers or Schedule B commodity numbers would be when those numbers were incorrect on the entry documentation or Shipper's Export Declarations (SEDs) from which they were derived. It was suggested that ''good faith effort'' language, as discussed in prior consultations, should be incorporated within proposed § 191.51. It was further suggested that if drawback claims were required to provide the SED tariff number to the 6-digit level for exports, they should also be permitted to provide a statement as to any discrepancy between that number and the actual number that would be reported to Customs at entry if the merchandise had been imported.

In addition, with reference to the provision in proposed § 191.51(c) that claimants using certificates of manufacture and delivery could meet the requirement with the HTSUS number on such a certificate, it was asked if this meant the HTSUS number of the imported designated merchandise, or the manufactured article, since the claimant might be using the previously manufactured article to make a second product for export.

Customs Response: The comment that the effective dates for when HTSUS numbers or Schedule B commodity numbers are required should be included in the regulations has merit and is adopted. Section 191.51(c) adds a provision in this regard.

As for the second comment suggesting deletion of the reference to a certificate of manufacture and delivery, this comment points out a lack of clarity in the regulation. The provision is modified to make it clear that the 6-digit HTSUS number is always required for the designated imported merchandise, and that this number shall be provided from the entry documentation when the claimant is the importer of record and from the certificate of delivery and/or certificate of manufacture and delivery when the claimant is not the importer of record. Because the certificate of manufacture and delivery is part of a drawback claim, manufacturing drawback claimants filing claims for which such a certificate or certificates is or are parts may meet the requirement for providing the HTSUS number for the imported merchandise with the HTSUS number(s) on such certificate(s).

In the case of exports, the HTSUS number(s) or Schedule B commodity number(s) (to the 6-digit level in each instance) are also always required, and they shall be from the Shipper's Export Declaration(s) when required, or if not required, the numbers shall be the numbers that the exporter would have set forth on the SED(s), but for the exemption from the requirement for an SED.

As provided in §§ 191.10(b)(12) and 191.24(b), HTSUS numbers and/or Schedule B commodity number(s) are not required to be included for the transferred merchandise on certificates of delivery or certificates of manufacture and delivery unless the transferred merchandise is the designated imported merchandise or merchandise substituted therefor under 19 U.S.C. 1313(j)(2).

The comment regarding the possible implication that the 10-digit HTSUS number is required for Schedule B numbers from an SED is addressed by making clear in § 191.51(c) that the 6-digit limitation applies to both HTSUS numbers and/or Schedule B numbers.

As for the comment regarding the effect on drawback of the use of incorrect HTSUS numbers or Schedule B commodity numbers, when those numbers were incorrect on the entry documentation and/or SEDs from which they were derived, the requirement is that the HTSUS numbers for the designated imported merchandise be from the entry summary and other entry documentation (§§ 191.51(c), 191.10(b)(11), 191.24(b)(4)) and that the HTSUS numbers or Schedule B commodity numbers for the exported merchandise or articles be from the SED or, if no SED is required, the numbers that would have been on an SED if required. Thus, in each instance (except in the case of substituted merchandise under 19 U.S.C. 1313(j)(2), in which, according to the legislative history (see above), classification is one of the criteria on which commercial interchangeability is based), the HTSUS or Schedule B commodity numbers are derived from other documents. That is, no independent classification is required.

It is true that earlier consultations discussed a ''good faith effort'' in the HTSUS or Schedule B commodity numbers to be used on drawback entries and certificates. As stated in the background to the proposed regulations, the intent of the requirement for HTSUS or Schedule B commodity numbers was to enable Customs to ensure greater compliance through the use of enhanced penalty and automated drawback selectivity programs (62 FR 3090). The change from earlier discussions under which, instead of requiring independent classification for drawback, the HTSUS or Schedule B commodity numbers to be provided on drawback entries and certificates are those already required (except in the case of substitution under 19 U.S.C. 1313(j)(2), see above), simplifies drawback procedures in this regard. As stated above, all that is required is that the HTSUS numbers or Schedule B commodity numbers from the entry summary and other entry documentation or the SED be provided.

In view of these changes, Customs sees no need, benefit, or purpose to be served by some sort of ''good faith effort'' requirement. However, the current requirement, which merely provides for the source of the classification number for exports, does not preclude a claimant from explaining any discrepancy in this number for other drawback purposes (*e.g.*, commercial interchangeability under 19 U.S.C. 1313(j)(2) or same kind and quality under 19 U.S.C. 1313(p)).

The comment questioning whether the HTSUS number on a certificate of manufacture and delivery is that for the imported designated merchandise or the manufactured article raises a valid concern and is addressed by further clarifying § 191.51(c) in this respect.

Comment: A definition of the term ''perfecting'' was requested in proposed § 191.52. It was also requested that Customs develop a formal procedure for tolling or suspending the 3-year claim completion period during an audit, internal advice request, or other action initiated by Customs regarding a drawback claim.

It was observed that copies of export bills of lading were requested in proposed § 191.52(b)(1), but that in proposed § 191.72(a), the original was required.

It was also asked whether protesting a drawback claim gave the right to amend the claim even though the 3-year period may have passed.

Customs Response: Customs believes that a specific definition of the term ''perfecting'' in § 191.52 is unnecessary. The comment that procedures should be provided for tolling or suspending the 3-year period for completion of a claim is also not adopted. It is the claimant's responsibility to file a complete claim; a prudent claimant would ensure timely filing of a complete claim for all possible applicable provisions.

The comment regarding copies or originals of bills of lading, in § 191.52(b)(1), raises a valid concern. Modifications, consistent § 191.72(a), are made here.

In response to the question of whether protesting a claim may allow a claimant to amend a claim outside the 3-year time period, the 3-year time period is statutory, and may not be extended unless specifically provided for in the statute. As part of protest procedures, a claim may be perfected, but it may not be amended (insofar as amendment would result in a complete claim not being filed within the 3-year time limit).

It is noted that the heading of § 191.52 is changed to ''Rejecting, perfecting or amending claims'', and the heading of paragraph (a) thereof is changed to ''Rejecting the claim''.

Comment: It was believed that, for consistency, the notification to the applicant provided for in proposed § 191.52(a)(1) should be ''in writing.''

Customs Response: This comment has merit and is adopted.

Comment: It was asserted that proposed § 191.52(a)(2) failed to recognize the retroactive application of 19 U.S.C. 1313(p), in that the restriction in 19 U.S.C. 1313(r)(1) did not apply to claims under § 1313(p).

Customs Response: As for the retroactive application of 19 U.S.C. 1313(p), it is Customs position that resolution of the applicability of § 1313(p) to past drawback claims will be resolved on a case-by-case basis.

In addition, a reference to 19 U.S.C. 1313(r)(3) is included in § 191.51(a)(2) as proposed, which, as noted, is redesignated as § 191.51(e). Additionally, § 191.51(e), as thus redesignated, which provides the time for filing a completed claim, is further modified by the addition of the statutory provision that claims not completed within the 3-year period (unless specifically exempted) shall be considered abandoned.

Comment: With reference to proposed § 191.52(b), it was thought that a new paragraph should be added to include certificates of delivery requested by Customs among the additional evidence or information that could be filed more than 3 years after the date of exportation. It was also suggested that a new paragraph be added to provide for the submission of other alternative information as approved by the drawback office, in lieu of that set forth in proposed § 191.52(b)(1)–(3). In addition, it was mentioned that provision should be made for a situation when the drawback office decides after receipt of the claim that the claimant should have its own filer code. Furthermore, it was recommended that, for consistency, the notification to the applicant provided for in this provision should be in writing.

Customs Response: The comment suggesting the inclusion of requested certificates of delivery to perfect a drawback claim has merit and is adopted. The comment regarding the addition of a paragraph providing for other alternative information is not adopted, as not necessary. Section § 191.52(b) already provides that the information described therein may include, but not be limited to, the information set forth in paragraphs (b)(1)–(3) thereof, as modified. The comment regarding a claimant's filer code is not adopted, as unnecessary. The comment that, for consistency, the notification to the filer should be ''in writing'' has merit and is adopted.

Comment: It was observed, with respect to proposed § 191.52(b)(2), that if the drawback claimant was not also the importer, the requirement that the import entry and invoice be submitted would be difficult to meet. The comment suggests that providing the entry number and a full description of the imported merchandise (but not the total duty paid or total value and volume of the import) should be sufficient for Customs.

Customs Response: Customs believes that the total duty paid is no more sensitive than the other information required under § 191.52(b). This comment is not adopted.

Comment: It was suggested that it be specifically set forth in proposed § 191.52(b)(2) and (3) that other types of data, in lieu of invoices, would be acceptable.

Customs Response: Customs believes that this is unnecessary. As previously noted, § 191.52(b) already provides that the information required may include, but is not limited to, that specifically set forth thereunder.

Comment: Regarding proposed § 191.52(c), the request was made that the word ''original'' be added before ''drawback claim'' to avoid confusion.

Customs Response: The comment that ''original'' should be added before ''drawback claim'' has merit and is adopted.

Comment: A question was raised about the need for proposed § 191.53, concerning the ''restructuring'' of claims; it was asked that this term be defined. The concern was also expressed that drawback offices might not fairly exercise the discretionary authority given to them in this section.

Customs Response: The procedures in § 191.53 permit Customs to require claimants to restructure their drawback claims so as to foster Customs administrative efficiency, subject to consideration by Customs of relevant factors (as listed in the provision). To protect the interests of claimants, a claimant may demonstrate an inability or impracticability in restructuring, with the criteria for so demonstrating specifically provided, and may propose a mutually acceptable alternative. Customs plans to provide training on the restructuring procedures to the field drawback offices.

Subpart F

Comment: A recommendation was made that a provision be added to proposed § 191.61 for the amendment of a claimant's specific or general manufacturing drawback ruling, if verification revealed errors or deficiencies with respect thereto. Current § 191.10(e) was referred to here.

Customs Response: Regarding amendments to correct errors or deficiencies found in verification, Customs agrees that § 191.61 should be appropriately changed to deal with this matter, although not with inclusion of all of the material currently in § 191.10(e). In this connection, with the change in terminology from drawback ''contracts'' to specific and general manufacturing drawback rulings, modification of the rulings and the effect thereof are governed by 19 U.S.C. 1625 and 19 CFR part 177.

As changed, § 191.61 adds a new paragraph (d), to provide that Customs Headquarters shall be promptly informed of any errors or deficiencies in a specific manufacturing drawback ruling or a general manufacturing drawback ruling, the letter of notification of intent to operate under a general manufacturing drawback ruling, or the acknowledgment of the letter of notification of intent, and that Customs Headquarters shall take appropriate action (with a citation to 19 U.S.C. 1625 and 19 CFR part 177).

Comment: It was stated that proposed § 191.61(b) appeared to be limited to manufacturing claims, and recommended that the language be expanded to cover the verification of all types of claims.

Customs Response: Customs agrees. Section 191.61 is modified accordingly.

Comment: With reference to proposed § 191.61(c), even though firm deadlines were not able to be established in the absence of ''deemed liquidated'' language, it was asked that Customs indicate the maximum time period it planned to use to liquidate a drawback entry.

Customs Response: This comment is not adopted. It is Customs position that, as previously set forth, no such time period must be specified, but claimants can avail themselves of accelerated drawback provisions to obtain early payment secured by a bond.

Comment: The suggestion was made that if the technical definition of ''falsification'', as used in proposed § 191.62, meant or implied fraudulent activity to the exclusion of negligent activity, then, in order to clarify the subject matter thereof (which included both fraud and negligence), the title of proposed § 191.62 should be changed. It was also observed here that a negligent violation was not necessarily a falsification.

Customs Response: The heading of § 191.62 is changed to ''Penalties''.

Comment: The question was raised in relation to proposed § 191.62(a) as to why criminal penalties were included therein. It was believed that Customs had agreed to eliminate the criminal provisions if civil penalties were included in the Customs Modernization Act.

Customs Response: Neither the statute nor the legislative history thereto contains any such provision.

Subpart G

Comment: It was believed that the phrase, ''after receipt'', should be added after ''4 working days'' in proposed § 191.71(a).

Customs Response: Customs agrees. The provision is changed accordingly.

Comment: For consistency, it was recommended that advising the filer, as provided in proposed § 191.71(a), be ''in writing''. It was also stated that the 7-day period for notice before the intended date of destruction was too long and that the same 2-day period used for notice of export should be used.

Customs Response: Customs agrees that advising the filer should be in

writing, and this provision is changed accordingly. However, Customs disagrees that a change in the applicable time period is needed. Customs does not anticipate undue confusion resulting from the different time frames for different purposes.

Comment: The view was expressed that proposed § 191.71(b) failed to provide for the evidence required when the merchandise was destroyed, in those cases where Customs did not notify the filer within the time in proposed § 191.71(a). It was believed that the wording of this provision should be changed from, ''When Customs declines the opportunity to attend'', to: ''When Customs does not attend (or witness) the destruction''.

Customs Response: This comment has merit and is adopted, although the modification of the wording, by the addition of ''(or witness)'' is not made, as unnecessary. Evidence of destruction must be provided whether or not Customs declines the opportunity to attend the destruction, or Customs decides to witness the destruction but does not do so.

Comment: A rewording of proposed § 191.71(c) was recommended, concerning the submission of evidence of destruction.

Customs Response: Customs agrees. After destruction the claimant must provide either the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, certified by the Customs officer attending the destruction, or, if Customs has not witnessed the destruction, the evidence that destruction took place in accordance with the approved Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback. The provision is changed accordingly.

In addition, the heading of subpart G is changed from ''Evidence of Exportation and Destruction'' to ''Exportation and Destruction'' because the subpart contains export and destruction provisions on procedures as well as evidence.

Comment: It was stated that the list of documentation for establishing exportation in proposed § 191.72(a) through (e) is not all inclusive. A suggestion was put forth here that the introductory text of proposed § 191.72 preceding paragraphs (a) through (e) should be revised to read: ''The procedures for establishing exportation outlined by this section include, but are not limited to:''. It was further recommended that the word ''Alternative'' should be removed from the heading and introductory text. It was also suggested that the word ''time'' of exportation in the introductory text be replaced with ''date'' of exportation.

Customs Response: The comment that ''include, but are not limited to'' should be inserted is adopted. The use of the word ''alternative'' in the heading and introductory text of § 191.72 is superfluous, as this section contains the exportation procedures in question. The heading is changed to ''Exportation procedures''. Also, the word ''time'' appearing in the introductory text is changed to ''date''.

Comment: The requirement in proposed § 191.72(a) for an original bill of lading was said to be inconsistent with industry practice. The elimination of this requirement was requested.

Customs Response: Customs agrees that the requirement for ''the original'' bill of lading or other document is inconsistent with actual practice. The provision is thus changed to provide for ''an originally signed bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest, or copies thereof certified by the exporting carrier or holder of the original, issued by the exporting carrier''. This is consistent with C.S.D. 82–59.

Comment: The recommendation was made that a separate column be added in the sample format for the export summary procedure in proposed § 191.73, to indicate the exporter's name, if different from the claimant. Additionally, it was asked if this procedure could be used for transfers to a foreign trade zone.

It was also noted that the capitalization of Chronological Export Summary was inconsistent in this provision.

Customs Response: A column is added to the sample format in § 191.73 to indicate the exporter's name if different from the claimant. In addition, a change is made to subpart R to include language making the export summary procedure applicable to transfers to foreign trade zones of merchandise placed in zone-restricted status (see 19 CFR 146.44). Also, § 191.73 is changed to consistently capitalize ''Chronological Summary of Exports'' throughout. Also, export identification is provided for ''deemed'' exports under subpart K.

Comment: In proposed § 191.73(b), it was said that the number sign (''#'') after the word ''destination'' appeared to be a ''typo''

Customs Response: Customs agrees, and the number sign ''#'' is deleted.

Comment: It was asked that a requirement be added to proposed § 191.73(c), specifying that the claimant, if not the exporter, would have to have an endorsement from the exporter to order to claim drawback.

Customs Response: The comment is correct. However, this is now provided for in § 191.82.

Comment: A recommendation was made that the word ''proof'' appearing in proposed § 191.73(c)(1) be changed to ''evidence''. It was also suggested that the last sentence thereof should be amended consistent with proposed § 191.72(a), which would prevent a filer from claiming that a copy or unsigned duplicate original was satisfactory.

Customs Response: These proposals have merit and are adopted. In § 191.73(c)(1), the word ''proof'' is changed to ''evidence'', and a reference is made to the actual evidence provided for in § 191.72(a).

Comment: The deletion of the last sentence in proposed § 191.73(c)(2) was requested.

Customs Response: Customs agrees. The last sentence in § 191.73(c)(2) is removed, and the second sentence is modified by the addition, at the end thereof, of the phrase '', and such records are subject to review by Customs''.

Comment: It was asked whether the reference in proposed § 191.75(a) and (b) to ''§ 191.73'' should instead be to ''191.72''.

Customs Response: The comment has merit. However, reference to both §§ 191.72 and 191.73 is intended. The provision is changed accordingly.

Comment: A question was raised as to the meaning of the statement in proposed § 191.75(a) that no bond would be required when the U.S. Government claimed drawback.

Customs Response: This comment raises a valid concern. The quoted statement, in § 191.75(a) as proposed, is of general application and is incorporated, as a separate paragraph, in § 191.4, which is revised accordingly.

Comment: In proposed § 191.75(b), it was believed that a reference to § 191.4(b) was needed.

Customs Responses: The comment has merit and is adopted.

Subpart H

Comment: With reference to proposed § 191.81, the comment was made that nowhere did Customs discuss the actual determination of drawback due.

It was also suggested that the regulations include a provision encouraging the timely and expeditious payment and liquidation of drawback claims.

Customs Response: Section 191.51(b) addresses the determination of drawback due. Also, the suggested inclusion of a provision encouraging

timely and expeditious payment of drawback and liquidation of drawback entries is not adopted. The accelerated payment procedure provides for expeditious payment of drawback. As previously noted, Customs takes the position that a categorical time limit regarding liquidation of drawback entries will not be set out, but claimants can avail themselves of accelerated drawback provisiosn to obtain early payment secured by a bond.

Comment: A comment suggested that the following be added at the end of the first sentence of proposed § 191.81(b)(1): ''only to the extent the merchandise in the quantities identified or designated is subject to a drawback claim''.

Customs Response: Customs agrees. To this end, the phrase, '', to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph.'', is added at the end of the first sentence of § 191.81(b)(1).

It is also pointed out here that in identifying, to the best of its knowledge, each import entry on a drawback claim that has been protested or that is the subject of a request for reliquidation, as required under § 191.81(b), the drawback claimant must use reasonable care (see 19 U.S.C. 1593a).

Comment: A clear definition of what constituted a voluntary tender was recommended in relation to proposed § 191.81(c), as well as a corresponding change to the waiver language in proposed § 191.81(c)(3). In this latter regard, it was asked what exactly was meant by the phrase in proposed § 191.81(c)(3), ''waiving any right to payment or refund under other provisions of law''.

Customs Response: A definition of voluntary tenders is added in § 191.3(a)(1)(iii). In addition, for purposes of clarification, proposed § 191.81(c)(3) is modified in the same manner as § 191.81(b)(1). It is also noted that proposed § 191.81(c)(1) and (2) are combined and redesignated as § 191.81(c)(1), and proposed § 191.81(c)(3) is redesignated as § 191.81(c)(2).

Comment: It was suggested that the heading in proposed § 191.81(f) be changed to ''By-products''. It was further suggested that the term ''Relative values'' be added there as well.

Customs Response: In view of the changes made in § 191.2(u) as redesignated, the heading of § 191.81(f) is changed to read ''Relative value; multiple products''.

Comment: Noting that specific reference was made in proposed § 191.82 as to the party who could claim drawback under 19 U.S.C. 1313(j)(1), it was suggested that specific reference also be provided in this section for § 1313(j)(2). Also, based on the second sentence of proposed § 191.175(a), Customs was urged to adopt a similar provision to apply to claims for all other types of drawback.

It was further asked whether the ''certification'' referred to in this section had to be executed on a new Customs Form or whether it could be done on company letterhead; whether it had to be submitted as part of the claim; and whether the manufacturer would have to issue a certificate of manufacture and delivery to the exporter who would then issue a certification back to the manufacturer allowing the manufacturer to file and claim drawback.

Customs Response: A reference to § 191.33(b) is included in § 191.82, for parties who may claim under 19 U.S.C. 1313(j)(2).

The comment that a provision such as in § 191.175(a) be added to § 191.82 is not adopted. The authority for the provision in § 191.175(a) is specifically provided in 19 U.S.C. 1313(p)(3)(C), but such a provision is not specifically provided for other subsections of the drawback law.

The certification may be executed on company letterhead as in current practice; it need not be submitted as part of a claim (although it must be filed at the time of, or prior to, the filing of the claim). Furthermore, in the situation covered by this provision, a certificate of manufacture and delivery is not required from the manufacturer to the exporter, nor is a certificate required from the exporter back to the manufacturer (see § 191.25). Also, provision is made for the filing of a ''blanket'' certification for a specified period, under this provision, consistent with similar provisions elsewhere in the regulations (see §§ 191.28, 191.33(a), 191.33(b)).

Subpart I

Comment: In proposed §§ 191.91 and 191.92, it was advocated that a successor be allowed to assume a predecessor's approvals for waiver of prior notice and accelerated payment, on the basis of the language in 19 U.S.C. 1313(s)(3)(A) providing for drawback successorship when an entity had transferred to another entity all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor.

It was suggested in this regard that such an assumption would be effective for one year from the date of succession. Within that year, the successor corporation would have to re-apply for the privilege. If the successor company applied within one year, then the privilege would remain in force until the new application was acted upon by Customs.

The suggestion was also put forth that the effect of existing waiver of prior notice and accelerated payment approvals, and requirements for reapplication, be included in the regulations themselves.

Customs Response: The assumption of waiver of prior notice and accelerated payment approvals by a successor has some merit, although Customs must ensure the protection of the revenue. Therefore, the provisions (§§ 191.91 and 191.92) are modified to provide for the limited, temporary assumption by a successor of waiver of prior notice of intent to export and accelerated payment approvals in a successorship such as that described in 19 U.S.C. 1313(s)(3)(A).

Unlimited assumption by the successor, however, is not provided for in a successorship such as that described in 19 U.S.C. 1313(s)(3)(B) (transfer of the assets and other business interests of a division, plant, or other business unit of the predecessor, under certain conditions).

The assumption by the successor of waiver of prior notice and accelerated payment approvals provided for will be effective for 1 year from the date of succession. Within that year, the successor must re-apply following the application procedures in § 191.91 and/or 191.92, as appropriate, and if the successor applies within 1 year, the approval of waiver of prior notice or accelerated payment remains in force until the new application is acted upon by Customs.

Furthermore, the request that provision for existing waiver of prior notice and accelerated payment approvals and requirements for re-applications be included in the regulations themselves has merit and is adopted.

In addition, all references to ''privileges'' are eliminated from subpart I and throughout part 191, and the references are replaced by reference to the particular procedure involved (either waiver of prior notice of intent to export or accelerated payment).

Comment: It was observed in relation to proposed § 191.91(b)(1) that the procedures for waiver of prior notice should also be extended to applicants who might wish to apply under 19 U.S.C. 1313(c).

Customs Response: This comment is not adopted. The waiver of the notice of intent to export applies under 19 U.S.C.

1313(j), which is a different statutory provision than 19 U.S.C. 1313(c). Under 19 U.S.C. 1313(c), the merchandise is required to be returned to Customs custody for exportation. No such requirement exists with respect to 19 U.S.C. 1313(j).

Comment: The observation was made that the nine-digit suffix, plus two-character suffix, should be required in proposed § 191.91(b)(2)(i)(A) and (B). Also, with reference to proposed § 191.91(b)(2)(i)(B), it was noted that the name, address, and identification number of current exporters, if the applicant was not the exporter, would be of minimal value, since it would be an extensive list and the exporters would be constantly changing.

Customs Response: Paragraphs (b)(2)(i)(A) and (B) of § 191.91 are modified to require the suffix in question; and paragraph (b)(2)(i)(B) thereof is further modified to require only the 3 most frequently used exporters, if there are multiple exporters, to appear in the application.

Comment: The question was asked as to what was meant by the term ''export period'', in proposed § 191.91(b)(2)(i)(C). It was further asserted in this connection that it was unnecessary to require applicants to provide the ''export period covered'', except in cases where the application was intended to cover other than prospective transactions.

Customs Response: The export period covered by the application means the period during which exports are made for which waiver of prior notice is requested (the period may be indefinite beginning with a stated date; or it may be a period with specified beginning and ending dates); it is Customs position that this information is necessary.

Comment: In proposed § 191.91(b)(2)(i)(F), (G), and (H), it was recommended that the reference to the ''next 12-month period'' be changed to refer to the next calendar year; it was asked what other requirements were referred to in proposed § 191.91(b)(2)(iii)(B); and it was suggested that a statement be required in proposed § 191.91(b)(2)(ii) as to whether an applicant was previously denied or had been approved for the one-time waiver procedure.

Customs Response: The ''12-month period'' referred to in § 191.91(b)(2)(F), (G), and (H) is changed to make it clear that the period covered is the next calendar year; § 191.91(b)(2)(ii) is changed to include a statement of whether the applicant was previously denied or had approved a 1-time waiver of prior notice under § 191.36; and the evidence referred to in § 191.91(b)(2)(iii)(B) is ''any other'' evidence, and the provision is changed by the addition of this modifier.

Comment: The suggestion was made that the words ''and/or'' be added for proposed § 191.91(b)(2)(iii)(A)(*1*) and (*2*), on the ground that a claimant may not have laboratory records as such.

Customs Response: This comment has merit and is adopted, with the additional statement that the requirements for the records are ''as applicable''.

Comment: It was remarked that Customs should justify and state its reason for the ''inability to* * *act on the application'', as set forth in proposed § 191.91(c)(1). It was further observed in this connection that the last sentence should add the language, ''but are not limited to''. It was stated here that the proposal was too restrictive, and that it would require granting of a waiver if the applicant had a history of bad exams.

Customs Response: The comment that Customs must justify and state its reason for the inability to act on the application has merit and is adopted. Customs will endeavor to meet a directory 90-day time limit in this regard. The comment requesting the addition of ''but are not limited to'' is also adopted, for the reason given.

Comment: In proposed § 191.91(c)(2), it was contended that Customs did not have the right to limit future filings for waiver of prior notice (and it was contended that Customs could not limit retroactive waivers of prior notice). It was asked that if the waiver could only be ''prospective'' as used in proposed § 191.91(c)(2), it be from the date of the application for waiver, not the waiver approval. In this regard, it was noted that proposed § 191.36 provided for claims that were filed pending disposition of application. The question was put as to what an applicant was supposed to do between filing its request for waiver of notice of intent to export and receiving approval of the request.

Customs Response: These comments are not adopted. The elimination of unlimited retroactive waivers of prior notice meets the interest of eliminating a significant internal control weakness reported by the Treasury Inspector General; while the provision for a one-time opportunity for drawback claims under 19 U.S.C. 1313(j), without having provided Customs with prior notice, meets the interest of claimants who may not have known of the requirement for prior notice of intent to export before the exports occurred.

Approvals of waiver of prior notice are effective for exportations occurring after the date of approval. Between the time of filing a request for waiver of prior notice and approval of the waiver, applicants should provide prior notice of export as provided in § 191.35.

Comment: With reference to proposed § 191.91(d), it was contended that a ''stay'' without cause could become too burdensome to the drawback community. It was urged that the provision be eliminated entirely or changed to allow Customs to inspect a few export transactions during a specified period of time. If Customs wanted to ''stay'' waiver of prior notice altogether, then there should be a ''good cause'' requirement for staying waiver of prior notice, for any duration of time. In this latter connection, it was asked that a stay be specifically limited, such as for 30 days.

It was also observed that under proposed § 191.91(d), a ''stay'' would take effect on the date of the agency's letter of notification, even though such a letter would be received after the date thereon. It was requested here that a privilege holder be afforded a reasonable period after the date of Customs letter of notification of a ''stay''.

In addition, a suggestion was made that the last sentence of proposed § 191.91(d) make clear that, upon reinstatement, the waiver of prior notice would apply to exports occurring on or after the date of such reinstatement. Also, an editorial comment recommended that the word ''agency'' appearing several times in the provision be replaced with other terminology.

Customs Response: The stay procedure for waiver of prior notice is retained in § 191.91(d). The waiver of prior notice procedure has been identified as a significant weakness in Customs administration of drawback. As explained in the BACKGROUND'' section of the proposed rule, the stay procedure would not be an adverse action, suspension, or other form of sanction against the person for whom the privilege is approved; rather it is a limitation on what is being granted in the approval itself, there being no statutory entitlement to this procedure. Customs continues to believe that this limitation would best protect the revenue and the public interest in sound administration of the drawback program.

However, the time within which a stay goes into effect, that is, before the person received notice of the stay, raises concerns. The provision is accordingly changed to provide that written notice of a stay be given to the person for

whom waiver of prior notice was approved, and that such written notice shall be by registered or certified mail. The stay will take effect two working days after the date the person signs the return post office receipt for the registered mail. The delay of two business days is required by 19 CFR § 191.35(a) (i.e., notice of intent to export at least 2 working days prior to the date of intended export).

The comment stating that ''good cause'' or similar language be added in proposed § 191.91(d) governing the implementation of a stay is not adopted. Once Customs has waived the requirement for prior notice of intent to export, Customs has no way of ensuring, before the fact, that the exported merchandise is the merchandise claimed and meets the requirements of the drawback law. Thus, it continues to be Customs position that an approval of waiver of prior notice may be stayed, should Customs for any reason desire to examine the subject merchandise prior to its exportation, for purposes of verification. However, the provision is modified to provide that in its letter notifying the person to whom approval of waiver of prior notice has been granted Customs must specify the reason(s) for the stay.

In regard to the comment asking that the period for a stay be limited to a specific period, such as 30 days, this comment is also not adopted. The period for a stay remains ''a specified reasonable period''. The reason that the time-period may not be specified is that the time will vary from case to case (*e.g.*, one person for whom waiver of prior notice has been approved may have many exports within a month and another may have only a few exports in a year; thus it could be that sufficient exports for Customs to verify compliance with the drawback laws occur in less than a month or no exports occur within several months).

The editorial comment (noting the frequency of use of the term ''agency'') is addressed. Also, § 191.91(d) is further modified by the addition of the phrase, '', for exports occurring on or after the date of reinstitution'' after the word ''resume'' in the last sentence of this section.

Comment: A question was raised as to the meaning of the phrase ''proposed revocation'' as used in proposed § 191.91(e). Clarification was also urged here as to when such a revocation would take effect.

Customs Response: To address the commenter's inquiry, a proposed revocation does not immediately deprive the person of waiver of prior notice procedures, unless it is accompanied by a notice of stay under § 191.91(d), under which the stay is effective two working days after the date the person signs the return post office receipt for the registered mail. The provision is changed to make that clear. Otherwise, proposed revocation will become effective 30 days after written notice thereof, unless the proposed revocation is timely challenged under § 191.91(g). If challenged, the procedures in § 191.91(g) apply to the proposed revocation.

In addition, because it is anticipated that many claimants will have approval of waiver of prior notice, approval of accelerated payment of drawback (under § 191.92), and certification in the drawback compliance program (under subpart S), in the interest of administrative efficiency, therefore, the same delay procedures (except for the stay, which is only potentially applicable to waiver of prior notice) are provided for revocation of accelerated payment and certification in the drawback compliance program.

As a result, claimants with approval for more than one of these procedures and/or certification (see §§ 191.93 and 191.195) could be notified in one written notice of the proposed revocation of the procedure[s] and/or certification, if applicable.

Comment: It was stated that, in proposed § 191.91(f), the claim should also be flagged to indicate that it was the first claim filed with waiver of prior notice, to reduce the possibility of the drawback office's failure to record that the claimant had waiver of prior notice.

Customs Response: This comment has merit and is adopted, the last sentence in the section being changed to provide that in addition to submitting a copy of the approval letter with the first drawback claim filed in any drawback office other than the approving office, reference shall be made to the approval of waiver of prior notice in the first drawback claim filed after approval in the approving drawback office.

Comment: The contention was made that the requirements for accelerated payment of drawback in proposed § 191.92 were virtually identical to the requirements for participation in the drawback compliance program. The accelerated payment requirements were said to be quite onerous, and would be time consuming and costly.

Customs Response: Customs disagrees. It is Customs position that the criteria for approval for accelerated payment and certification for participation in the drawback compliance program are not identical. The criteria for each were developed with specific regard for each of the programs and criteria.

Comment: It was advocated that accelerated payment of drawback should be available under 19 U.S.C. 1313(d).

Customs Response: This comment has merit and is adopted (consistent with current practice). Section 191.92(a) is modified to provide that accelerated payment of drawback is available for all kinds of drawback claims, unless specifically excepted.

Additionally, accelerated payment of drawback is defined as the payment of estimated drawback before liquidation of the drawback entry. Also, this provision is modified to make it clear that, consistent with current practice, accelerated payment of drawback is only available when Customs review of the request for accelerated payment of drawback does not find omissions from, or inconsistencies with, the requirements of the drawback law and part 191. A reference to subpart E is also added to this provision, to make it clear to the public that, at a minimum, a complete drawback claim meeting the requirements in that subpart is required for accelerated drawback.

Comment: It was believed that the IRS number (9 digits, plus 2 character suffix) was needed in proposed § 191.92(b)(1)(ii).

Customs Response: This comment has merit and is adopted.

Comment: A requirement should be added to proposed § 191.92(e)(2) that Customs justify its reasons for being unable to act on the application within 90 days.

Customs Response: This request has merit and is adopted.

Comment: Opposition was expressed to the requirement in proposed § 191.92(e) that approval of accelerated payment operated only prospectively. This was said to be counter to past administrative practices. Past drawback claims could be bonded by single transaction bonds.

Customs Response: Customs agrees. Consistent with current practice, accelerated payment, following its approval, will be available for claims filed prior thereto, but such claims must be covered by a single transaction bond. Section 191.92(e) is so modified.

Comment: The need for a stay of the privilege of accelerated payment was questioned, in proposed § 191.92(f).

Customs Response: The provision for a ''stay'' is removed for approvals of accelerated payment because, in the case of that procedure, there are procedures protecting the revenue (the requirement for a bond in an amount sufficient to cover the estimated amount

of drawback to be claimed during the term of the bond (§§ 191.92(b)(1)(iv)(A) through (C) and 191.92(d)), and Customs may determine whether to grant accelerated payment for a claim before the fact (distinguished from waiver of prior notice, in which case the exportation has occurred and Customs has no before-the-fact opportunity for review). Section 191.92 is changed accordingly; paragraph (f) thereof is removed, and the succeeding paragraphs duly redesignated.

Comment: The meaning of ''proposed revocation'' in proposed § 191.92(g) was questioned, as well as when the notice thereof would take effect.

Customs Response: Section 191.92(f) as thus redesignated from proposed § 191.92(g) is revised, consistent with the changes made in § 191.91(e).

Comment: With reference to proposed § 191.92(h), it was advised that the first claim should be flagged to reduce the possibility of the drawback office's failure to record that the claimant had approval of accelerated payment.

Customs Response: Customs agrees. Section 191.92(g) as redesignated from proposed § 191.92(h) is revised, consistent with the changes made in § 191.91(f).

Comment: In proposed § 191.92(j), it was requested that Customs address the circumstance when accelerated payment was less than the actual refund entitlement.

A request was also made here that the requirement for certifying the drawback claim for payment within 3 weeks after filing should be changed to 3 weeks after filing a complete and accurate claim or, alternatively, the term ''filing'' should be clearly defined as requiring filing a complete and accurate claim, not simple presentation. Furthermore, it was asserted that the parenthetical in proposed § 191.92(j) appeared to contradict proposed paragraph (h) thereof, by restricting accelerated payment to the office where the privilege was approved.

Customs Response: Customs disagrees that it should address the situation where a party claims less drawback than entitled. Customs recognizes the interest of a claimant in exercising caution by under-claiming, as well as its own interest in not assuming the administrative burden of correcting such claims.

Also, § 191.92(a) has been modified to make it clear that, consistent with current practice, accelerated payment of drawback under § 191.92 is only available when Customs review of the request for accelerated payment does not find omissions from, or inconsistencies with, the requirements of the drawback law and part 191. In this regard, a parenthetical reference to subpart E is added to § 191.92(a).

The comment that this provision may be inconsistent with proposed § 191.92(h) (now redesignated as § 191.92(g)), permitting accelerated payment to be applied for at a drawback office other than the approving office, has merit. The first sentence of § 191.92(i) as redesignated from proposed § 191.92(j) is modified, by deleting the parenthetical therefrom, in order to make it clear that the drawback office where the request for accelerated payment is made is responsible for certifying the claim for payment.

Comment: It was suggested that proposed § 191.93, relating to combined applications, be revised to more closely parallel § 191.195, concerning the drawback compliance program.

Customs Response: This comment has merit in that it raises the concern that § 191.93 does not refer to the drawback compliance program, which may also be applied for in a combined application for waiver of prior notice and approval of accelerated payment of drawback. The provision is modified by the addition of a parenthetical citation to § 191.195.

Subpart K

Comment: The requirement in proposed § 191.112(h) that the drawback office certify the Customs Form 7514 after the vessel or aircraft had cleared from the port of entry, and return a copy to the exporter, was said to be unnecessary. The deletion of this requirement was advised.

Customs Response: Customs agrees. The certification is deleted therefrom. Also, if the export summary procedure is used under this subpart, the requirements for a notice of lading in § 191.112(d)(1) and declaration in § 191.112(f)(1) must be met.

Subpart M

Comment: A question was raised as to the requirement in proposed § 191.133(a) that 19 U.S.C. 1313(g) applied only to materials used in the ''original'' construction and equipment of vessels or aircraft. An objection was also raised about the reference therein to § 1313(g) not applying to material not required for the safe operation of a vessel or aircraft.

Customs Response: A similar comment was made when the same provision was added to the current regulations (see T.D. 83–212). Customs position at that time was that this restriction followed the intent of Congress. If an article is not attached to, or made a part of, a vessel, or is merely placed aboard the vessel and not required for safe operation of the vessel or safety of the crew, Congress did not intend that it be the subject of drawback. Customs position here has not changed.

However, the comment does raise a valid concern. The statute (19 U.S.C. 1313(g)) provides for drawback on materials imported and used in the construction and equipment of the covered vessels. The statute does not directly address the precise question of whether the materials have to be imported and used in original construction and equipment of vessels and aircraft.

Accordingly, § 191.133(a) is modified to provide that 19 U.S.C. 1313(g) applies only to materials used in the original construction and equipment of vessels and aircraft, or to materials used in a ''major conversion'' of a vessel or aircraft. ''Major conversion'' has the same meaning as in 46 U.S.C. 2101(14a) (a conversion that substantially changes the dimensions or carrying capacity of the vessel or aircraft, changes the type of the vessel or aircraft, substantially prolongs the life of the vessel or aircraft, or otherwise so changes the vessel or aircraft that it is essentially a new vessel or aircraft, as determined by Customs).

In either instance, the restriction against materials used for alteration or repair, or against materials not required for safe operation of the vessel or aircraft, continues in effect (except to the extent that a qualifying ''major conversion'' could be considered an alteration).

Subpart O

Comment: A comment with reference to proposed § 191.152(c) suggested the use of ''evidence of destruction'' instead of ''proof of destruction''.

Customs Response: This comment has merit and is adopted.

Subpart P

Comment: The comment was made that the phrase ''any additional proof'' in proposed § 191.163(b) be changed to ''any additional evidence''.

Customs Response: This comment has merit and is adopted.

Subpart Q

Comment: It was requested that Customs implement in proposed § 191.175(b) certain interim procedures relating to certificates of manufacture and delivery and certificates of delivery, as set forth in a Customs issuance dated September 2, 1994 (although referred to in the comment as being dated September 14, 1994).

Customs Response: The provision implements the statutory language (see §§ 191.173(c)(1) and (2), and 191.174(c)(1) and (2)). Further, it is not inconsistent with the cited interim procedures which, in any case, are superseded by these regulations.

Comment: It was requested, in connection with proposed § 191.176, that Customs allow drawback claimants a certain period of time in which to file new drawback claims, or amend previously filed claims, that satisfy the requirements of 19 U.S.C. 1313(p), without regard to the requirement that drawback claims would have to be completed within 3 years after the date of exportation.

Customs Response: As previously stated, it is Customs position that the applicability of 19 U.S.C. 1313(p) to past drawback claims will be resolved on a case-by-case basis.

Subpart R

Comment: It was suggested that the phrase, ''Proof of export'', in proposed § 191.183(b)(1), be changed to ''Evidence of export''.

Customs Response: This comment has merit and is adopted.

Comment: A comment suggested adoption of Customs Form 214 for drawback in proposed § 191.183(b), and that the functions that proposed § 191.183(c) required to be performed by drawback offices should be removed.

Customs Response: Customs agrees. The Customs Form for transfers to a foreign trade zone of zone restricted merchandise (Customs Form 214) is used for notice of transfer instead of Customs Form 7514. Section 191.183(b) is revised accordingly, and § 191.183(c) is deleted, as unnecessary.

Subpart S

Comment: It was asked how Customs intended to inform the public of its obligations to drawback, pursuant to proposed § 191.191.

Customs Response: The statute and the regulations inform the public of its obligations and responsibilities for drawback purposes. As a matter of outreach and to enhance understanding thereof, Customs is developing and will make available, from field drawback offices, materials to help inform the public of its obligations and responsibilities for drawback purposes. This material will be available to the public in paper form and electronically.

Comment: Regarding the individuals authorized to sign an application for the drawback compliance program, in proposed § 191.193(c), it was suggested that this matter be reviewed in connection with parts 111, 177, and 191 of the Customs Regulations.

Customs Response: The concerns expressed in this comment have already been addressed by the changes made to § 191.6.

Comment: It was recommended that proposed § 191.193(c)(1) include the 9-digit IRS number, plus two character suffix, as being required to be used on drawback claims.

Customs Response: This comment has merit and is adopted.

Comment: It was requested that the term ''subcontractor'' in proposed § 191.193(c)(2) be defined. It was noted that ''agent'' in proposed § 191.9(d)(2) was defined, but not ''subcontractor''.

Customs Response: The concerns raised here are addressed by changes made in §§ 191.9, 191.10, and 191.26 (§ 191.25 as proposed).

Comment: The recommendation was made that the oversight responsibilities of the official described in proposed § 191.193(d)(1) be specifically shown, and that proposed § 191.193(d)(1) be further amended to require the name, title, and telephone number of the individual(s) responsible for the actual maintenance of the drawback program.

Customs Response: This comment has merit and is adopted in part; provision is made for the inclusion of the individual(s) responsible for the actual maintenance of the drawback program (as opposed to supervisory responsiblity), if different from the person responsible for oversight of the drawback program. Additionally, the reference therein to ''claimant's'' is changed to ''applicant's'' because applicants for participation in the drawback compliance program may be other than claimants.

Comment: It was recommended, with respect to proposed § 191.193(d)(2), that if a drawback manufacturing ruling or acknowledgment had been previously issued under § 191.8 or 191.7, a copy or statement of that fact with the date and place of issue be submitted.

Customs Response: This comment has merit and is adopted.

Comment: It was stated that proposed § 191.194 had a paragraph (c)(1) but no paragraph (c)(2).

Customs Response: Section 191.194(c) is revised accordingly.

Comment: A question arose as to the meaning of ''proposed revocation'' in proposed § 191.194(e), and it was further asked when such a revocation would take effect. It was also suggested that the words ''drawback compliance'' be inserted after the word ''negotiated'' and before the words ''alternative program'' therein.

Customs Response: Section 191.194(e) is changed, consistent with the changes made in §§ 191.91(e) and 191.92(g). Also, the editorial comment that ''drawback compliance'' should be inserted between ''negotiated alternative'' and ''program'' has merit and is adopted.

Appendix A

Comment: It was asked why a detailed format for the drawback compliance program was not included as an appendix to proposed part 191.

Customs Response: The material referred to by the comment was determined to be appropriate for publication as part of the regulations or an appendix thereto. The material, and other similar material, will, when satisfactorily developed, be made available to the public both in paper form (from the field drawback offices) and electronically.

Comment: A comment was made that the general manufacturing drawback rulings in Appendix A should be identified by their Treasury Decision (T.D.) numbers (or some other Customs-assigned number).

Customs Response: The comment has merit and is adopted; the general manufacturing drawback rulings are identified by their T.D. numbers. Additionally, to provide easier access to the public and to simplify use of the appendices, a table of contents is added to each Appendix listing each of the general and specific manufacturing drawback rulings, the general manufacturing drawback rulings are set forth in alphabetical order in Appendix A, and the specific manufacturing drawback rulings are set forth in numerical order in Appendix B.

Comment: It was observed with respect to Appendix A that ''I.A.'' (General Instructions) did not include the basis of claim for drawback as one of the items; that ''operator'' was used instead of ''claimant''; that ''I.A.3.'' should be explained better and reference made to proposed § 191.6; that ''I.B.'' indicated old general T.D. numbers were superseded, but did not include T.D.s 83–53, 83–8, 83–77, and 83–80; that the meaning of ''privileges'' in the last sentence of ''I.B.'' was unclear; that Ruling ''III.'' needed an explanatory paragraph as to when this Ruling would apply (it was also asked if the reference therein to T.D.s 55027(2) and 55207(1) could be removed).

Customs Response: The basis of claim is added to the information that the applicant must provide in ''I.A.'' (General Instructions) in Appendix A; the word ''operator'' therein is changed to ''manufacturer or producer'';

reference is added to § 191.6; the T.D.s not included in the proposed rule are added; to avoid confusion the phrase, ''including all privileges of the previous 'contract' '', is deleted from the last sentence of ''I.B.'' of the General Instructions in Appendix A.

The comment on Ruling ''III.'' (agent's general ruling) is addressed by changes to § 191.9, making clear that principal-agency drawback principles may be used for both 19 U.S.C. 1313(a) and 1313(b), and are not limited to situations with multiple manufacturers or producers The introductory sentence for ''III.'' is changed to read: ''Manufacturers or producers operating under this general manufacturing drawback ruling must comply with T.D.s 55027(2), 55207(1), and 19 U.S.C. 1313(b), if applicable, as well as 19 CFR part 191 (see particularly, § 191.9).''). Also, a new paragraph ''C.'' (General Statement) concerning principal-agency is added to Ruling ''II.'', and the succeeding paragraphs are redesignated accordingly.

Comment: The following was also stated with respect to ''I.A.'' and ''I.B.'' of the General Instructions to proposed Appendix A: the IRS number with suffix should be included; the General Instructions should not omit any information, or applicants should be directed to § 191.7 for complete information; and in ''I.B.'', the list of general Treasury Decisions appeared to omit T.D. 84–49, and T.D. 83–123 for Relative Values was not described in full, even though listed.

Customs Response: The IRS number with suffix is added in ''I.A.''; the general requirements are changed to require all necessary information, and reference to § 191.7 is added.

T.D. 83–123 is combined with T.D. 81–234 to cover manufacturing or producing under 19 U.S.C. 1313(a), with or without multiple products. It is Customs position that all necessary components from these T.D.s were included (except for the sentences in the Procedures and Records Maintained section that ''The records of the manufacturer or producer establishing compliance with these requirements will be available for audit by Customs during business hours.'', and ''Drawback is not payable without proof of compliance.'', both of which are now added to that section, consistent with the other general manufacturing drawback rulings).

Although included in the specific rulings in proposed Appendix B (consistent with current practice), T.D. 84–49 is now added to Appendix A as a general manufacturing drawback ruling.

Comment: It was suggested that the passage under ''II.C.'' of Appendix A should instead read: ''The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with 19 CFR 191.2(p)''. Similar changes in all of the general rulings.

Customs Response: This comment has merit and is adopted, although proposed ''II.C'' is redesignated as ''II.D.'', and proposed § 191.2(p) is redesignated as § 191.2(q). Similar changes as requested by the comment are made throughout the Appendices.

Comment: The suggestion was made that ''II.D.1.'' and ''II.D.2.'' should use the term ''multiple products'' instead of ''by products'', and that similar changes should be made to all of the general rulings.

Customs Response: This comment has merit and is adopted. Similar changes are made throughout the Appendices. It is noted that ''II.D.'' is redesignated as ''II.E.''.

Comment: It is asserted, with respect to ''II.F.'', that the term ''operator'' should be replaced by ''manufacturer or producer'', and that similar changes should be made to all of the general and specific rulings.

Customs Response: This comment has merit and is adopted. Similar changes are made throughout the Appendices. It is noted that ''II.F.'' is redesignated as ''II.G.''.

Comment: A comment was made that, in ''II.L.4.'', the phrase, ''or other persons legally authorized to bind the corporation'', should be added after ''corporate officers'' to be consistent with ''I.A.3.'' (General Instructions).

Customs Response: This comment has merit; the provision is changed to be consistent with the cited reference and §§ 191.6 and 191.7; further, in the interest of simplicity, the provision is changed to require the reporting of any changes in the information required in the letter of notification, as well as any changes in the corporate name or corporate organization by succession or reincorporation. It is also noted that proposed ''II.L.'' is redesignated as ''II.M.''.

Comment: The general ruling for agents in ''III.'', it was noted, did not include provision for ''Waste'' or ''Stock in Process''. It was further noted that proposed paragraph ''D.'' thereof appeared to imply that only agents performing operations under proposed § 191.2(p)(1) could use the general agents' ruling (and not those performing operations under proposed § 191.2(p)(2)). With reference to proposed paragraph ''E.'' thereof providing that records would be maintained to establish certain dates, it was believed that the ''month'' was sufficient for this purpose, but that this was not clear from this general ruling.

Customs Response: ''Waste'' and ''Stock in Process'' sections are not required in this general manufacturing drawback ruling; if applicable, such sections would be included in the principal's manufacturing drawback ruling.

The change to manufacturing or production (referring to proposed § 191.2(p), now redesignated as § 191.2(q)), addresses this issue; actual dates of receipt of merchandise, dates of use in manufacture or production, and dates of return to the principal are required (except that manufacturing or production periods (for a period of a month unless Customs specifically approves a different period) may be used). If a manufacturing period is used, receipt of all of the merchandise must be before the beginning of the month and the date of return to the principal must be after the end of the month.

It is also noted that proposed paragraphs ''B.'' and ''C.'' of ''III.'' (general ruling for agents) are deleted, with the succeeding paragraphs thereof redesignated accordingly. To this end, paragraphs ''D.'' and ''E.'' thereof, as proposed, are redesignated as paragraphs ''B.'' and ''C.'', respectively. In addition, the section on procedures and records maintained of this general ruling for agents (paragraph ''E.'', now redesignated as paragraph ''C.'', as indicated) is modified to be consistent with § 191.10(e), in requiring the same information provided for in that section.

Comment: An editorial point was raised in the proposed component parts general ruling, ''IV.'', paragraph ''J.'', that ''Eligible components that appears in'' should be ''Eligible components that appear in''.

Customs Response: This comment has merit and is adopted. It is also noted that this general ruling is redesignated as ''V.'' in Appendix A., due to the addition of the other general rulings, and the repositioning thereof in alphabetical order, as already mentioned.

Comment: In proposed ''V.'', the general ruling for orange juice, it was stated that proposed paragraph ''G.'' appeared twice, once for ''Procedures and Records Maintained'' and again for ''Inventory''.

Customs Response: This comment is incorrect, due probably to an error in the electronic version not occurring in the **Federal Register** version. It is also noted that this general ruling is redesignated as ''VIII.''.

Comment: It was also advised that the general ruling for orange juice in proposed paragraph ''H.'' should not, as it did, omit the wording ''and will show what components were blended with concentrated orange juice for manufacturing'', which was important for liquidation and compliance purposes (to know what components were utilized).

Customs Response: This comment has merit and is adopted.

Comment: It was observed that the general ruling for piece goods in proposed ''VI.'' deviated from T.D. 83–73 in that ''appearing in'' and ''used in'' were permitted as a basis of claim. The ''appearing in'' basis, it was said, appeared to conflict with the paragraphs on Waste and Shrinkage, Gain and Spoilage, in terms of recordkeeping.

Customs Response: This comment raises a valid concern. The paragraphs on Waste and Shrinkage, and Gain and Spoilage in this general ruling, now redesignated as ''X.'', are modified to provide that records thereof need not be kept if the appearing in method is used (if necessary to establish the quantity of merchandise eligible piece goods appearing in the exported articles, of course, such records would have to be kept).

Comment: The paragraphs ''N.'', ''O.'', ''R.'', and ''S.'' in the proposed general ruling for raw sugar (''IX.'') referred specifically to the forms in the previous T.D. 83–59; it was recommended that these forms should be reproduced and made part of the Appendix.

Customs Response: The comment suggesting inclusion in the general ruling of the forms in T.D. 83–59 is adopted (by, as appropriate, a description of the forms or a sample form). This general ruling is redesignated as ''XIII.''.

Appendix B

Comment: In Appendix B, it was suggested that provision be made for review of proposals for specific manufacturing drawback rulings by the appropriate regulatory audit office of Customs, if requested by a claimant.

Customs Response: Customs disagrees. The matter commented on is a matter for Customs internal administration of the drawback program.

Comment: It was recommended, with respect to the sample formats for the specific rulings under 19 U.S.C. 1313(a) and (b) (combination), and for 19 U.S.C. 1313(b), that, under the respective sections on Process of Manufacture or Production, the reference to the court cases was unnecessary, that the ''new and different article'' language should be removed, and a reference to the definition of manufacture or production in proposed § 191.2(p) should be added.

Customs Response: This recommendation is adopted, except the ''new and different article'' language is not removed, as it is part of the definition in § 191.2(q), as thus redesignated, which reflects long-standing administration of manufacturing drawback.

Comment: Under the format for the specific ruling for 19 U.S.C. 1313(b), in the Waste section, it was disagreed that the determination of whether waste was valuable should be based on industry practice.

Customs Response: The treatment of waste described is consistent with Customs current practice.

Comment: It was suggested that the Inventory Procedures section for the formats for specific rulings under 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b), be modified as concerns the maintenance of waste records thereunder.

Customs Response: The second sentence under Inventory Procedures is modified by the insertion after the words ''following areas'' of the phrase '', as applicable,''.

Comment: The Stock In Process sections in the formats for specific rulings under 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b), were said to need clarification.

Customs Response: Customs finds that the Stock In Process sections in both Appendices A and B are confusing. The Stock In Process paragraphs are modified.

Comment: It was advocated that the petroleum general ruling be treated like all other general rulings, in that applications for general rulings for petroleum drawback should be filed with a local drawback office and moved from Appendix B to Appendix A. In Exhibit C, the labels for the columns were said to be transposed. It was suggested that Exhibits D and E be changed to reflect that all petroleum claims were now filed preliminarily in the form of certificates of manufacture (CM) (*i.e.*, instead of ''amount of drawback claim'' in Exhibit D, the reference should be to ''amount of CM''; Exhibit E was always a combination of drawback deliveries and exported quantities; the quantities indicated on Exhibit E combination did not reflect the numbers within Exhibit C, as it related to exports (*i.e.*, residual oils category)—these Exhibits should be changed to reflect this practice)).

Customs Response: The comment that the petroleum general ruling should be treated like all other general manufacturing drawback rulings and should be acknowledged by field drawback offices has merit and is adopted. The petroleum general manufacturing drawback ruling (T.D. 84–49) is added to Appendix A. As already noted, language is added to § 191.7 and the General Instructions for Appendix A making clear that applications to operate under one of the general manufacturing drawback rulings in Appendix A are to be made to the field drawback offices and be acknowledged by those offices, provided that the letter of notification of intent to operate under the general manufacturing drawback ruling is complete, the general manufacturing drawback ruling is applicable, the general manufacturing drawback ruling is followed without variation, and the manufacturing or production process described meets the definition of a manufacture or production.

If there is any deviation from the general manufacturing drawback ruling, the procedures for specific manufacturing drawback rulings are applicable. Regarding the Exhibits for this general ruling, the comment about the transposition of columns in Exhibit C is correct; the columns are re-transposed; Exhibits D and E are modified to state the ''amount of drawback claimed'' instead of ''amount of drawback claim''; and the comments are correct that the numbers in Exhibit E (Combination) for the quantity in barrels of Residual Oils, and reflected therefrom in other calculations, are inconsistent with the other Exhibits.

As such, Exhibit E and Exhibit E (Combination) are modified to be consistent with the other exhibits, and the descriptions of the products in the exhibits are modified to specify whether the product is an export or a drawback delivery.

Comment: In the Inventory Procedures sections of the formats under both 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b), a question was raised about the statement that accelerated payment would be denied, pending an audit, if records failed to establish drawback requirements. The deletion of this statement was recommended.

Customs Response: The described sentence is deleted, as not appropriate where stated. Accelerated payment of drawback is governed by the regulation applicable thereto (19 CFR 191.92).

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded

that the proposed amendments with the modifications above should be adopted.

Furthermore, in Appendix B, the format for a 19 U.S.C. 1313(d) specific ruling is modified by the addition of the material on principal-agent operations, as done in the formats for 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b).

Regulatory Flexibility Act and Executive Order 12866

This final rule document amends the Customs drawback regulations principally to reflect changes to the law occasioned by the Customs modernization portion of the NAFTA Implementation Act. The final rule also makes certain administrative changes to the existing regulations which are essentially intended to simplify and expedite the filing and processing of claims for the payment of drawback, and it generally revises and rearranges these regulations to improve their editorial clarity. As such, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this rule does not have a significant economic impact on a substantial number of small entities. Thus, it is not subject to the requirements of 5 U.S.C. 603 or 604, nor would it result in a ''significant regulatory action'' under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1505–0213. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule is in §§ 191.0–191.195. This information is necessary and will be used to enforce the requirements of the drawback law and protect the revenue. The likely respondents and/or recordkeepers are business and other for-profit institutions.

The estimated average burden associated with the collection of information in this final rule per respondent/recordkeeper is 2 hours for filing drawback-related entry documents, and 60 hours for Drawback Compliance Program participation.

Customs has submitted a copy of the revised information collection contained in 19 CFR part 191, and previously approved under OMB control number 1515–0213, and requested approval for the revision.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229 and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

PARALLEL REFERENCE TABLE

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.0	191.0.
191.0a	New.
191.1	191.1.
191.2(a)	191.2(p).
191.2(b)	New.
191.2(c)	New.
191.2(d)	New.
191.2(e)	New.
191.2(f)	191.2(b).
191.2(g)	New.
191.2(h)	191.2(j).
191.2(i)	191.2(a).
191.2(j)	191.2(i).
191.2(k)	191.2(h).
191.2(l)	191.2(g).
191.2(m)	New.
191.2(n)	New.
191.2(o)	191.2(l).
191.2(p)	191.2(f).
191.2(q)	New.
191.2(r)	New.
191.2(s)	New.
191.2(t)	New.
191.2(u)	New.
191.2(v)	191.2(n).
191.2(w)	191.2(e).
191.2(x), (x)(2), (x)(3)	New.
191.2(x)(1)	191.2(m).
191.2(y)	191.2(o).
191.3	191.3.
191.4	191.11.
191.5	191.13.
191.6	191.6.
191.7(a)	191.41.
191.7(b)(1)	191.42(a).
191.7(b)(2)	191.42(b).
191.7(c)	191.43.
191.7(d)	191.44.
191.8(a)	191.21(a).
191.8(b)	191.21(c).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.8(c)	191.21(b).
191.8(d)	191.21(d); 191.23(a).
191.8(e)	191.23(b).
191.8(f)	191.24.
191.8(g)(1)	191.25(a) & (b)(1).
191.8(g)(2)	191.25(b)(2).
191.8(g)(3)	191.25(c).
191.8(h)	191.26.
191.9	191.21(a)(2); 191.34; 191.66(b), (f).
191.10(a)	191.65(a).
191.10(b)	191.22(e).
191.10(c)(1)	191.65(b).
191.10(c)(2)	191.66(d).
191.10(d)	191.5; 191.22(e).
191.10(e)	New.
191.10(f)	191.65(d).
191.11	191.27.
191.12	New.
191.13	191.4(a)(11).
191.14	191.22(c).
191.15	191.5.
191.21	191.4(a)(1).
191.22(a)	191.4(a)(2).
191.22(b)	191.32(c).
191.22(c)	191.32(d).
191.22(d)	New.
191.22(e)	191.22(a)(5) & 191.33.
191.23(a)–(d)	New.
191.23(e)(1)	191.22(a)(2) & 191.32(b).
191.23(e)(2)	191.22(a)(1)(iv).
191.24(a)	191.66(a).
191.24(b)	New.
191.24(c)	191.22(a)(4); 191.62(a)(2)(i).
191.24(d)	New.
191.25	New.
191.26(a)(1)	191.22(a)(1).
191.26(a)(1)(iii)	191.22(a)(3).
191.26(a)(2)	191.22(b).
191.26(b)	191.32(a).
191.26(c)	191.22(a)(2) & 191.32(b).
191.26(d)	191.62(a)(2)(ii).
191.26(e)	191.62(c).
191.26(f)	191.5.
191.27(a)	191.8(a); 191.22(a)(1)(v).
191.27(b)	191.32(a).
191.27(c)	191.23(c).
191.28	New.
191.31(a)	191.4(a)(9); 191.141(a)(1).
191.31(b)	191.8(b); 191.141(a)(2).
191.31(c)	191.141(a)(3).
191.32(a)	191.141(a)(10).
191.32(b)	191.141(h).
191.32(c)	New.
191.32(d)	191.141(h).
191.32(e) & (f)	New.
191.33	New.
191.34(a)	191.65(a); 191.141(b) & (e).
191.34(b)	New.
191.34(c)	191.65(d).
191.35	191.141(b).
191.36	New.
191.37	New.
191.38(a)	191.5
191.38(b)	191.22(b).
191.41	191.142(a)(1).
191.42	191.142(b).
191.43	191.142(a)(2).
191.44	New.
191.51(a)	191.62(a) & (b).
191.51(b), (c) & (d)	New.
191.52(a)	191.61.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.52(b) & (c)	191.64.
191.53	New.
191.61	191.10.
191.62(a)	191.9.
191.62(b)	New.
191.71	191.141(f).
191.72	191.51.
191.73	191.53.
191.74	191.54.
191.75	191.55.
191.76	191.67.
191.81	191.71.
191.82	191.73(a).
191.83	191.73(b).
191.84	191.7.
191.91	191.141(b)(2)(ii).
191.92	191.72.
191.93	New.
191.101	191.81.
191.102	191.82.
191.103	191.83.
191.104	191.84.
191.105	191.85.
191.106	191.86.
191.111	191.91.
191.112	191.92; 191.93.
191.121	191.101.
191.122	191.102.
191.123	191.103.
191.131	191.111.
191.132	191.112.
191.133	191.113.
191.141	191.121.
191.142	191.122.
191.143	191.123.
191.144	191.124.
191.151	191.131.
191.151(a)(1)	191.8(c).
191.152	191.132.
191.153	191.133.
191.154	191.134.
191.155	191.135.
191.156	191.136.
191.157	191.137.
191.158	191.138.
191.159	191.139.
191.161	191.151.
191.162	191.152.
191.163	191.153.
191.164	191.154.
191.165	191.155.
191.166	191.156.
191.167	191.157.
191.168	191.158.
191.171	New.
191.172	New.
191.173	New.
191.174	New.
191.175	New.
191.176	New.
191.181	191.161.
191.182	191.162.
191.183	191.163.
191.184	191.164.
191.185	191.165.
191.186	191.166.
191.191	New.
191.192	New.
191.193	New.
191.194	New.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.195	New.

PARALLEL REFERENCE TABLE

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191]

Old section	Revised section
191.0	191.0.
191.1	191.1.
191.2(a)	191.2(i).
191.2(b)	191.2(f).
191.2(c)	Deleted.
191.2(d)	Deleted.
191.2(e)	191.2(w).
191.2(f)	191.2(p).
191.2(g)	191.2(l).
191.2(h)	191.2(k).
191.2(i)	191.2(j).
191.2(j)	191.2(h).
191.2(k)	Deleted.
191.2(l)	191.2(o).
191.2(m)	191.2(x)(1).
191.2(n)	191.2(v).
191.2(o)	191.2(y).
191.2(p)	191.2(a).
191.3	191.3.
191.4(a)(1)	191.21.
191.4(a)(2)	191.22(a).
191.4(a)(3)–(8)	Deleted.
191.4(a)(9)	191.31(a).
191.4(a)(10)	191.32(a).
191.4(a)(11)	191.13.
191.4(a)(12)–(14)	Deleted.
191.4(b)	Deleted.
191.5	191.10(d); 191.15; 191.26(f); 191.38(a).
191.6	191.6.
191.7	191.84.
191.8(a)	191.27(a).
191.8(b)	191.31(b).
191.8(c)	191.151(a)(1).
191.9	191.62(a).
191.10	191.61.
191.11	191.4.
191.12	Deleted.
191.13	191.5.
191.21(a)	191.8(a).
191.21(a)(1)	Deleted.
191.21(a)(2)	191.9.
191.21(b)	191.8(c).
191.21(c)	191.8(b).
191.21(d)	191.8(d).
191.21(e)	Deleted.
191.22(a)(1)	191.26(a)(1).
191.22(a)(1)(iv)	191.23(e)(2).
191.22(a)(1)(v)	191.27(a).
191.22(a)(2)	191.23(e)(1); 191.26(c).
191.22(a)(3)	191.26(a)(1)(iii).
191.22(a)(4)	191.24(c).
191.22(a)(5)	191.22(e).
191.22(b)	191.26(a)(2); 191.38(b).
191.22(c)	191.14.
191.22(d)	Deleted.
191.22(e)	191.10(b) & (d).
191.23(a)	191.8(d).
191.23(b)	191.8(e).
191.23(c)	191.27(c).
191.23(d)	Deleted.
191.24	191.8(f).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191]

Old section	Revised section
191.25(a)	191.8(g)(1).
191.25(b)(1)	191.8(g)(1).
191.25(b)(2)	191.8(g)(2).
191.25(c)	191.8(g)(3).
191.26	191.8(h).
191.27	191.11.
191.31	Deleted.
191.32(a)	191.26(b); 191.27(b).
191.32(b)	191.26(c); 191.23(e)(1).
191.32(c)	191.22(b).
191.32(d)	191.22(c).
191.33	191.22(e).
191.34	191.9.
191.41	191.7(a).
191.42(a)	191.7(b)(1).
191.42(b)	191.7(b)(2).
191.43	191.7(c).
191.44	191.7(d).
191.45	Deleted.
191.51	191.72.
191.52	Deleted.
191.53	191.73.
191.54	191.74.
191.55	191.75.
191.56	Deleted.
191.57	Deleted.
191.61	191.52(a).
191.62(a)	191.51(a).
191.62(a)(2)(ii)	191.26(d).
191.62(b)	191.51(a).
191.62(c)	191.26(e).
191.62(d)	Deleted.
191.63	Deleted.
191.64	191.52(b) & (c).
191.65(a)	191.10(a).
191.65(b)	191.10(c)(1).
191.65(c)	Deleted.
191.65(d)	191.10(f); 191.34(c).
191.66(a)	191.24(a).
191.66(b)	191.9.
191.66(c)	Deleted.
191.66(d)	191.10(c)(2).
191.66(e)	Deleted.
191.66(f)	191.9.
191.67	191.76.
191.71	191.81.
191.72	191.92.
191.73(a)	191.82.
191.73(b)	191.83.
191.81	191.101.
191.82	191.102.
191.83	191.103.
191.84	191.104.
191.85	191.105.
191.86	191.106.
191.91	191.111.
191.92, 191.93	191.112.
191.101	191.121.
191.102	191.122.
191.103	191.123.
191.111	191.131.
191.112	191.132.
191.113	191.133.
191.121	191.141.
191.122	191.142.
191.123	191.143.
191.124	191.144.
191.131	191.151.
191.132	191.152.
191.133	191.153.
191.134	191.154.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191]

Old section	Revised section
191.135	191.155.
191.136	191.156.
191.137	191.157.
191.138	191.158.
191.139	191.159.
191.141(a)(1)	191.31(a).
191.141(a)(2)	191.31(b).
191.141(a)(3)	191.31(c).
191.141(b)	191.34(a); 191.35.
191.141(b)(2)(ii)	191.91.
191.141(c)	191.51.
191.141(d)	191.73.
191.141(e)	Deleted.
191.141(f)	191.71.
191.141(g)	191.51; 191.52.
191.141(h)	191.32(b) & (d).
191.142(a)(1)	191.41.
191.142(a)(2)	191.43.
191.142(b)	191.42.
191.151	191.161.
191.152	191.162.
191.153	191.163.
191.154	191.164.
191.155	191.165.
191.156	191.166.
191.157	191.167.
191.158	191.168.
191.161	191.181.
191.162	191.182.
191.163	191.183.
191.164	191.184.
191.165	191.185.
191.166	191.186.

List of Subjects

19 CFR Part 7

Customs duties and inspection, Exports, Imports.

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 145

Customs duties and inspection, Imports, Postal Service.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free Trade Agreement).

19 CFR Part 191

Canada, Commerce, Customs duties and inspection, Drawback, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

Parts 7, 10, 145, 173, 174, 181 and 191, Customs Regulations (19 CFR parts 7, 10, 145, 173, 174, 181 and 191) are amended as set forth below.

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The general authority citation for part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

§ 7.1 [Amended]

2. Section 7.1(a) is amended by removing the reference to ''§§ 191.85 and 191.86'' where appearing therein, and by adding in place thereof, ''§§ 191.105 and 191.106''.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

§ 10.38 [Amended]

2. Section 10.38(f) is amended by removing the reference to ''§ 191.10'' where appearing therein, and by adding in place thereof, ''§ 191.61''.

PART 145—MAIL IMPORTATIONS

1. The general authority citation for part 145 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

§ 145.72 [Amended]

2. Section 145.72(e) is amended by removing the reference to ''Section 191.142'' where appearing therein, and by adding in place thereof, ''Section 191.42''.

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

1. The general authority citation for part 173 continues to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

2. Section 173.4 is amended by adding a sentence at the end of paragraph (c) to read as follows:

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

* * * * *

(c) * * * The party requesting reliquidation under section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)) shall state, to the best of his knowledge, whether the entry for which correction is requested is the subject of a drawback claim, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and 191.81(b) of this chapter).

* * * * *

PART 174—PROTESTS

1. The general authority citation for part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

2. Section 174.13 is amended by adding a new paragraph (a)(9) to read as follows:

§ 174.13 Contents of protest.

(a) *Contents, in general.* * * *

(9) A declaration, to the best of the protestant's knowledge, as to whether the entry is the subject of drawback, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and § 191.81(b) of this chapter).

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by removing the listings, respectively, for ''§§ 191.0–191.166'' and for ''§ 191.53'' together with the corresponding descriptions and OMB control numbers therefor; and by adding, in place thereof, a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB Control Numbers.

19 CFR section	Description	OMB control No.
*	*	*
§§ 191.0–191.195	Recordkeeping and reporting requirements relating to drawback	1515–0213
*	*	*

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The general authority citation for part 181 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314.

§ 181.44 [Amended]

2. Section 181.44(d) is amended by removing the reference to ''§ 191.2(m)'' where appearing therein, and by adding in place thereof, ''§ 191.2(x)(1)''.

3. The ''Example'' in § 181.44(f) is amended by removing the reference to ''Customs Form 7575–A'' where appearing therein, and by adding in its place, ''Customs Form 7551''.

§ 181.45 [Amended]

§ 181.45 Goods eligible for full drawback.

4. Section 181.45 is amended by revising paragraph (b)(2)(i) to read:

* * * * *

(b) * * *

(2) * * *

(i) *General.* (A) *Inventory of other than all non-originating goods.* Commingling of fungible originating and non-originating goods in inventory is permissible provided that the origin of the goods and the identification of entries for designation for same condition drawback are on the basis of an approved inventory method set forth in the appendix to this part.

(B) *Inventory of the non-originating goods.* If all goods in a particular inventory are non-originating goods, identification of entries for designation for same condition drawback shall be on the basis of one of the accounting methods in § 191.14 of this chapter, as provided therein.

§ 181.46 [Amended]

5. Section 181.46(b) is amended by removing the term ''port(s)'' where appearing in the first sentence, and adding in place thereof, ''drawback office(s)''.

§ 181.47 [Amended]

6. Section 181.47(b)(2)(i)(C) is amended by removing the words ''Exporter's'' and ''exporter's'' where appearing therein, and by adding in place thereof, ''Export'' and ''export'', respectively.

7. Section 181.47(b)(2)(ii)(A) is amended by removing ''Customs Form 7539J'', and adding in place thereof, ''Customs Form 7551''.

8. Section 181.47(b)(2)(ii)(D) is amended by removing the phrase ''The certificate of delivery portion of Customs Form 331'' where appearing therein, and adding in place thereof, ''A certificate of delivery on Customs Form 7552''.

9. Section 181.47(b)(2)(ii)(G) is amended by revising the first two sentences to read:

§ 181.47 Completion of claim for drawback.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(G) Evidence of exportation. Acceptable documentary evidence of exportation to Canada or Mexico shall include a bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier. * * *.

10. Section 181.47(b)(2)(iii)(A) is amended by removing ''Customs Form 7539C'' where appearing therein, and by

adding in place thereof, ''Customs Form 7551''.

11. Section 181.47(b)(2)(v) is amended by removing the reference to ''subpart L'' where appearing therein, and by adding in place thereof, ''subpart N''.

§ 181.49 [Amended]

12. Section 181.49 is amended by removing the reference to ''§ 191.5'' where appearing therein, and by adding in place thereof, ''§ 191.15 (see also §§ 191.26(f), 191.38, 191.175(c))''.

§ 181.50 [Amended]

13. Section 181.50(c) is amended by removing the reference to ''§ 191.72'' where appearing therein, and by adding in place thereof, ''191.92''.

1. Part 191 is revised to read as follows:

PART 191—DRAWBACK

Sec.

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

§ 191.62 also issued under 18 U.S.C. 550, 19 U.S.C. 1593a;

§ 191.84 also issued under 19 U.S.C. 1514;

§§ 191.111, 191.112 also issued under 19 U.S.C. 1309;

§§ 191.151(a)(1), 191.153, 191.157, 191.159 also issued under 19 U.S.C. 1557;

§ 191.182–191.186 also issued under 19 U.S.C. 81c;

§§ 191.191–191.195 also issued under 19 U.S.C. 1593a.

§ 191.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

§ 191.0a Claims filed under NAFTA.

Claims for drawback filed under the provisions of part 181 of this chapter shall be filed separately from claims filed under the provisions of this part.

Subpart A—General Provisions

§ 191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, the Commissioner of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

§ 191.2 Definitions.

For the purposes of this part:

(a) *Abstract. Abstract* means the summary of the actual production records of the manufacturer.

(b) *Act. Act,* unless indicated otherwise, means the Tariff Act of 1930, as amended.

(c) *Certificate of delivery. Certificate of delivery* (see § 191.10 of this part) means Customs Form 7552, Delivery Certificate for Purposes of Drawback, summarizing information contained in original documents, establishing:

(1) The transfer from one party (transferor) to another (transferee) of:

(i) Imported merchandise;

(ii) Substituted merchandise under 19 U.S.C. 1313(j)(2);

(iii) A qualified article under 19 U.S.C. 1313(p)(2)(A)(ii) from the manufacturer or producer to the exporter or under 1313(p)(2)(A)(iv) from the importer to the exporter; or

(iv) Drawback product;

(2) The identity of such merchandise or article as being that to which a potential right to drawback exists; and

(3) The assignment of drawback rights for the merchandise or article transferred from the transferor to the transferee.

(d) *Certificate of manufacture and delivery. Certificate of manufacture and delivery* (see § 191.24 of this part) means Customs Form 7552, Delivery Certificate for Purposes of Drawback, summarizing information contained in original documents, establishing:

(1) The transfer of an article manufactured or processed under 19 U.S.C. 1313(a) or 1313(b) from one party (transferor) to another (transferee);

(2) The identity of such article as being that to which a potential right to drawback exists; and

(3) The assignment of drawback rights for the article transferred from the transferor to the transferee.

(e) *Commercially interchangeable merchandise. Commercially interchangeable merchandise* means merchandise which may be substituted under the substitution unused merchandise drawback law, § 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)) (see § 191.32(b)(2) and (c) of this part), or under the provision for the substitution of finished petroleum derivatives, § 313(p), as amended (19 U.S.C. 1313(p)).

(f) *Designated merchandise. Designated merchandise* means either eligible imported duty-paid merchandise or drawback products selected by the drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b) or (j)(2), as applicable, or qualified articles selected by the claimant as the basis for drawback under 19 U.S.C. 1313(p).

(g) *Destruction. Destruction* means the complete destruction of articles or merchandise to the extent that they have no commercial value.

(h) *Direct identification drawback. Direct identification drawback* means drawback authorized either under § 313(a) of the Act, as amended (19 U.S.C. 1313(a)), on imported merchandise used to manufacture or produce an article which is either exported or destroyed, or under § 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under Customs supervision, without having been used in the United States (see also §§ 313(c), (e), (f), (g), (h), and (q)). Merchandise or articles may be identified for purposes of direct identification drawback by use of the accounting methods provided for in § 191.14 of this subpart.

(i) *Drawback. Drawback* means the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax which was imposed on imported merchandise under Federal law because of its importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d) (see also § 191.3 of this subpart).

(j) *Drawback claim. Drawback claim* means the drawback entry and related documents required by regulation which together constitute the request for drawback payment.

(k) *Drawback entry. Drawback entry* means the document containing a description of, and other required information concerning, the exported or destroyed article on which drawback is claimed. Drawback entries are filed on Customs Form 7551.

(l) *Drawback product.* A *drawback product* means a finished or partially finished product manufactured in the United States under the procedures in this part for manufacturing drawback. A drawback product may be exported, or destroyed under Customs supervision with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers or producers operating under the procedures in this part for manufacturing drawback, in which case drawback would be claimed upon exportation or destruction of the ultimate product. Products manufactured or produced from substituted merchandise (imported or domestic) also become ''drawback products'' when applicable substitution provisions of the Act are met. For purposes of § 313(b) of the Act, as amended (19 U.S.C. 1313(b)), drawback products may be designated as the basis for drawback or deemed to be substituted merchandise (see § 1313(b)). For a drawback product to be designated as the basis for drawback, the product must be associated with a certificate of manufacture and delivery (see § 191.24 of this part).

(m) *Exportation; exporter.* (1) *Exportation. Exportation* means the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. An exportation may be deemed to have occurred when goods subject to drawback are admitted into a foreign trade zone in zone-restricted status, or are laden upon qualifying aircraft or vessels as aircraft or vessel supplies in accordance with § 309(b) of the Act, as amended (19 U.S.C. 1309(b)) (see §§ 10.59 through 10.65 of this chapter).

(2) *Exporter. Exporter* means that person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States. In the case of ''deemed exportations'' (see paragraph (m)(1) of this section), the exporter means that person who, as the principal party in interest in the transaction deemed to be an exportation, has the power and responsibility for determining and controlling the transaction (in the case of aircraft or vessel supplies under 19 U.S.C. 1309(b), the party who has the power and responsibility for lading the vessel supplies on the qualifying aircraft or vessel).

(n) *Filing. Filing* means the delivery to Customs of any document or documentation, as provided for in this part, and includes electronic delivery of any such document or documentation.

(o) *Fungible merchandise or articles. Fungible merchandise or articles* means merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

(p) *General manufacturing drawback ruling.* A *general manufacturing drawback ruling* means a description of a manufacturing or production operation for drawback and the regulatory requirements and interpretations applicable to that operation (see § 191.7 of this subpart).

(q) *Manufacture or production. Manufacture or production* means:

(1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive ''name, character or use''; or

(2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (p)(1) of this section.

(r) *Multiple products. Multiple products* mean two or more products produced concurrently by a manufacture or production operation or operations.

(s) *Possession. Possession*, for purposes of substitution unused merchandise drawback (19 U.S.C. 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback.

(t) *Records. Records* include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which pertain to the filing of a drawback claim or to the information contained in the records required by Chapter 4 of Title 19, United States Code, in connection with the filing of a drawback claim and which are normally kept in the ordinary course of business (see 19 U.S.C. 1508).

(u) *Relative value. Relative value* means the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by Customs, of each such product determined as of the time it is first separated in the manufacturing or production process. Market value is generally measured by the selling price, not including any packaging, transportation, or other identifiable costs, which accrue after the product itself is processed. Drawback law requires the apportionment of drawback to each such product based on its relative value at the time of separation.

(v) *Schedule.* A *schedule* means a document filed by a drawback claimant, under § 313(a) or (b), as amended (19 U.S.C. 1313(a) or (b)), showing the quantity of imported or substituted merchandise used in or appearing in each article exported or destroyed for drawback.

(w) *Specific manufacturing drawback ruling.* A *specific manufacturing drawback ruling* means a letter of approval issued by Customs Headquarters in response to an application, by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format used. Synopses of approved specific manufacturing drawback rulings are published in the Customs Bulletin with each synopsis being published under an identifying Treasury Decision. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

(x) *Substituted merchandise or articles. Substituted merchandise or articles* means merchandise or articles that may be substituted under 19 U.S.C. 1313(b), 1313(j)(2), or 1313(p) as follows:

(1) Under § 1313(b), substituted merchandise must be of the same kind and quality as the imported designated merchandise or drawback product, that is, the imported designated merchandise or drawback products and the substituted merchandise must be capable of being used interchangeably in the manufacture or production of the exported or destroyed articles with no substantial change in the manufacturing or production process;

(2) Under § 1313(j)(2), substituted merchandise must be commercially interchangeable with the imported designated merchandise; and

(3) Under § 1313(p), a substituted article must be of the same kind and quality as the qualified article for which it is substituted, that is, the articles must be commercially interchangeable or described in the same 8-digit HTSUS tariff classification.

(y) *Verification. Verification* means the examination of any and all records, maintained by the claimant, or any party involved in the drawback process, which are required by the appropriate Customs officer to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified.

§ 191.3 Duties and fees subject or not subject to drawback.

(a) Duties subject to drawback include:

(1) All ordinary Customs duties, including:

(i) Duties paid on an entry, or withdrawal from warehouse, for consumption for which liquidation has become final;

(ii) Estimated duties paid on an entry, or withdrawal from warehouse, for consumption, for which liquidation has not become final, subject to the conditions and requirements of § 191.81(b) of this subpart;

(iii) Tenders of duties after liquidation of the entry, or withdrawal from warehouse, for consumption for which the duties are paid, subject to the conditions and requirements of § 191.81(c) of this part, including:

(A) Voluntary tenders (for purposes of this section, a ''voluntary tender'' is a payment of duties on imported merchandise in excess of duties included in the liquidation of the entry, or withdrawal from warehouse, for consumption, provided that the liquidation has become final and that the other conditions of this section and § 191.81 of this part are met);

(B) Tenders of duties in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4); and

(C) Duties restored under 19 U.S.C. 1592(d).

(2) Marking duties assessed under § 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)); and,

(3) Internal revenue taxes which attach upon importation (see § 101.1(i) of this chapter).

(b) Duties and fees not subject to drawback include:

(1) Harbor maintenance fee (see § 24.24 of this chapter);

(2) Merchandise processing fee (see § 24.23 of this chapter); and

(3) Antidumping and countervailing duties on merchandise entered, or withdrawn from warehouse, for consumption on or after August 23, 1988.

(c) No drawback shall be allowed when the identified merchandise, the designated imported merchandise, or the substituted other merchandise (when applicable), consists of an agricultural product which is duty-paid at the over-quota rate of duty established under a tariff-rate quota, except that:

(1) Agricultural products as described in this paragraph are eligible for drawback under 19 U.S.C. 1313(j)(1); and

(2) Tobacco otherwise meeting the description of agricultural products in this paragraph is eligible for drawback under 19 U.S.C. 1313(j)(1) or 19 U.S.C. 1313(a).

§ 191.4 Merchandise in which a U.S. Government interest exists.

(a) *Restricted meaning of Government.* A U.S. Government instrumentality operating with nonappropriated funds is considered a Government entity within the meaning of this section.

(b) *Allowance of drawback.* If the merchandise is sold to the U.S. Government, drawback shall be available only to the:

(1) Department, branch, agency, or instrumentality of the U.S. Government which purchased it; or

(2) Supplier, or any of the parties specified in § 191.82 of this part, provided the claim is supported by documentation signed by a proper officer of the department, branch, agency, or instrumentality concerned certifying that the right to drawback was reserved by the supplier or other parties with the knowledge and consent of the department, branch, agency, or instrumentality.

(c) *Bond.* No bond shall be required when a United States Government entity claims drawback.

§ 191.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there. Under 19 U.S.C. 1313, drawback of Customs duty is not allowed on articles shipped to Puerto Rico, the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.6 Authority to sign drawback documents.

(a) Documents listed in paragraph (b) of this section shall be signed only by one of the following:

(1) The president, a vice-president, secretary, treasurer, or any other employee legally authorized to bind the corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship;

(4) Any employee of the business entity with a power of attorney;

(5) An individual acting on his or her own behalf; or

(6) A licensed Customs broker with a power of attorney.

(b) The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries;

(2) Certificates of delivery;

(3) Certificates of manufacture and delivery;

(4) Notices of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback;

(5) Certifications of exporters on bills of lading or evidence of exportation (see §§ 191.28 and 191.82 of this part); and

(6) Abstracts, schedules and extracts from monthly abstracts if not included as part of a drawback claim.

(c) The following documents (see also part 177 of this chapter) may be executed by one of the persons described in paragraph (a) of this section or by any other individual legally authorized to bind the person (or entity) for whom the document is executed:

(1) A letter of notification of intent to operate under a general manufacturing drawback ruling under § 191.7 of this part;

(2) An application for a specific manufacturing drawback ruling under § 191.8 of this part;

(3) A request for a nonbinding predetermination of commercial interchangeability under § 191.32(c)(2) of this part;

(4) An application for waiver of prior notice under § 191.91 of this part;

(5) An application for approval of accelerated payment of drawback under § 191.92 of this part; and

(6) An application for certification in the Drawback Compliance Program under § 191.93 of this part.

§ 191.7 General manufacturing drawback ruling.

(a) *Purpose; eligibility.* General manufacturing drawback rulings are designed to simplify drawback for certain common manufacturing operations but do not preclude or limit the use of applications for specific manufacturing drawback rulings (see § 191.8). A manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification of intent to operate under that general ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to submit the letter of notification, and cannot operate under a letter of notification submitted by the parent corporation.

(b) *Procedures.* (1) *Publication.* General manufacturing drawback rulings are contained in appendix A to this part. As deemed necessary by Customs, new general manufacturing drawback rulings will be issued as Treasury Decisions and added to the appendix thereafter.

(2) *Submission.* (i) *Where filed.* Letters of notification of intent to operate under a general manufacturing drawback ruling shall be submitted to any drawback office where drawback entries will be filed and liquidated, provided that the general manufacturing drawback ruling will be followed without variation. If there is any variation in the general manufacturing drawback ruling, the manufacturer or producer shall apply for a specific manufacturing drawback ruling under § 191.8 of this subpart.

(ii) *Copies.* Letters of notification of intent shall be submitted in duplicate unless claims are to be filed at more than one drawback office, in which case one additional copy of the letter of notification shall be filed for each additional office. Upon issuance of a letter of acknowledgment (paragraph (c)(1) of this section), the drawback office with which the letter of notification is submitted shall forward the additional copy to such additional office(s), with a copy of the letter of acknowledgment.

(3) *Information required.* Each manufacturer or producer submitting a letter of notification of intent to operate under a general manufacturing drawback ruling under this section must provide the following specific detailed information:

(i) Name and address of manufacturer or producer (if the manufacturer or producer is a separately-incorporated subsidiary of a corporation, the subsidiary corporation must submit a letter of notification in its own name);

(ii) In the case of a business entity, the names of the persons listed in

§ 191.6(a)(1) through (6) who will sign drawback documents;

(iii) Locations of the factories which will operate under the letter of notification;

(iv) Identity (by T.D. number and title) of the general manufacturing drawback ruling under which the manufacturer or producer will operate;

(v) Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling;

(vi) Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling;

(vii) Basis of claim used for calculating drawback; and

(viii) IRS (Internal Revenue Service) number (with suffix) of the manufacturer or producer.

(c) *Review and action by Customs.* The drawback office to which the letter of notification of intent to operate under a general manufacturing drawback ruling was submitted shall review the letter of notification of intent.

(1) *Acknowledgment.* The drawback office shall promptly issue a letter of acknowledgment, acknowledging receipt of the letter of intent and authorizing the person to operate under the identified general manufacturing drawback ruling, subject to the requirements and conditions of that general manufacturing drawback ruling and the law and regulations, to the person who submitted the letter of notification if:

(i) The letter of notification is complete (*i.e.*, containing the information required in paragraph (b)(3) of this section);

(ii) The general manufacturing drawback ruling identified by the manufacturer or producer is applicable to the manufacturing or production process;

(iii) The general manufacturing drawback ruling identified by the manufacturer or producer is followed without variation; and

(iv) The described manufacturing or production process is a manufacture or production under § 191.2(q) of this subpart.

(2) *Computer-generated number.* With the letter of acknowledgment the drawback office shall include the unique computer-generated number assigned to the acknowledgment of the letter of notification of intent to operate. This number must be stated when the person files manufacturing drawback claims with Customs under the general manufacturing drawback ruling.

(3) *Non-conforming letters of notification of intent.* If the letter of notification of intent to operate does not meet the requirements of paragraph (c)(1) of this section in any respect, the drawback office shall promptly and in writing specifically advise the person of this fact and why this is so. A letter of notification of intent to operate which is not acknowledged may be resubmitted to the drawback office with which it was initially submitted with modifications and/or explanations addressing the reasons given for non-acknowledgment, or the matter may be referred (by letter from the manufacturer or producer) to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings).

(d) *Duration.* Acknowledged letters of notification under this section shall remain in effect under the same terms as provided for in § 191.8(h) for specific manufacturing drawback rulings.

§ 191.8 Specific manufacturing drawback ruling.

(a) *Applicant.* Unless operating under a general manufacturing drawback ruling (see § 191.7), each manufacturer or producer of articles intended to be claimed for drawback shall apply for a specific manufacturing drawback ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to apply for a specific manufacturing drawback ruling, and cannot operate under any specific manufacturing drawback ruling approved in favor of the parent corporation.

(b) *Sample application.* Sample formats for applications for specific manufacturing drawback rulings are contained in appendix B to this part.

(c) *Content of application.* The application of each manufacturer or producer shall include the following information as applicable:

(1) Name and address of the applicant;

(2) Internal Revenue Service (IRS) number (with suffix) of the applicant;

(3) Description of the type of business in which engaged;

(4) Description of the manufacturing or production process, which shows how the designated and substituted merchandise are used to make the article that is to be exported or destroyed;

(5) In the case of a business entity, the names of persons listed in § 191.6(a)(1) through (6) who will sign drawback documents;

(6) Description of the imported merchandise including specifications;

(7) Description of the exported article;

(8) Basis of claim for calculating manufacturing drawback;

(9) Summary of the records kept to support claims for drawback; and

(10) Identity and address of the recordkeeper if other than the claimant.

(d) *Submission.* An application for a specific manufacturing drawback ruling shall be submitted, in triplicate, to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings). If drawback claims are to be filed under the ruling at more than one drawback office, one additional copy of the application shall be filed with Customs Headquarters for each additional office.

(e) *Review and action by Customs.* Customs Headquarters shall review the application for a specific manufacturing drawback ruling.

(1) *Approval.* If consistent with the drawback law and regulations, Customs Headquarters shall issue a letter of approval to the applicant and shall forward 1 copy of the application for the specific manufacturing drawback ruling to the appropriate drawback office(s) with a copy of the letter of approval. Synopses of approved specific manufacturing drawback rulings shall be published in the weekly Customs Bulletin with each synopsis being published under an identifying Treasury Decision (T.D.). Each specific manufacturing drawback ruling shall be assigned a unique computer-generated manufacturing number which shall be included in the letter of approval to the applicant from Customs Headquarters, appears in the published synopsis, and must be used when filing manufacturing drawback claims with Customs.

(2) *Disapproval.* If not consistent with the drawback law and regulations, Customs Headquarters shall promptly and in writing inform the applicant that the application cannot be approved and shall specifically advise the applicant why this is so. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval, or the disapproval may be appealed to Customs Headquarters (Attention: Director, International Trade Compliance Division).

(f) *Schedules and supplemental schedules.* When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule filed by the manufacturer or producer, the schedule will be reviewed by Customs Headquarters. The application may include a request for authorization for the filing of supplemental schedules with the drawback office where claims are filed.

(g) *Procedure to modify a specific manufacturing drawback ruling.* (1) *Supplemental application.* Except as provided for limited modifications in paragraph (g)(2) of this section, a manufacturer or producer desiring to modify an existing specific manufacturing drawback ruling shall submit a supplemental application for such a ruling to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings). Such a supplemental application may, at the discretion of the manufacturer or producer, be in the form of the original application, or it may identify the specific manufacturing drawback ruling to be modified (by T.D. number and unique computer-generated number) and include only those paragraphs of the application to be modified, with a statement that all other paragraphs are unchanged and are incorporated by reference in the supplemental application.

(2) *Limited modifications.* (i) A supplemental application for a specific manufacturing drawback ruling shall be submitted to the drawback office(s) where claims are filed if the modifications are limited to:

(A) The location of a factory, or the addition of one or more factories where the methods followed and records maintained are the same as those at another factory operating under the existing specific manufacturing drawback ruling of the manufacturer or producer;

(B) The succession of a sole proprietorship, partnership or corporation to the operations of a manufacturer or producer;

(C) A change in name of the manufacturer or producer;

(D) A change in the persons who will sign drawback documents in the case of a business entity;

(E) A change in the basis of claim used for calculating drawback;

(F) A change in the decision to use or not to use an agent under § 191.9 of this chapter, or a change in the identity of an agent under that section;

(G) A change in the drawback office where claims will be filed under the ruling (see paragraph (g)(2)(iii) of this section); or

(H) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in this paragraph, shall contain only the modifications to be made, in addition to identifying the specific manufacturing drawback ruling and being signed by an authorized person. To effect a limited modification, the manufacturer or producer shall file with the drawback office(s) where claims are filed (with a copy to Customs Headquarters, Attention, Duty and Refund Determination Branch, Office of Regulations and Rulings) a letter stating the modifications to be made. The drawback office shall promptly acknowledge, in writing, acceptance of the limited modifications, with a copy to Customs Headquarters, Attention, Duty and Refund Determination Branch, Office of Regulations and Rulings.

(iii) To effect a change in the drawback office where claims will be filed, the manufacturer or producer shall file with the new drawback office where claims will be filed, a written application to file claims at that office, with a copy of the application and approval letter under which claims are currently filed. The manufacturer or producer shall provide a copy of the written application to file claims at the new drawback office to the drawback office where claims are currently filed.

(h) *Duration.* Subject to 19 U.S.C. 1625 and part 177 of this chapter, a specific manufacturing drawback ruling under this section shall remain in effect indefinitely unless:

(1) No drawback claim or certificate of manufacture and delivery is filed under the ruling for a period of 5 years and notice of termination is published in the Customs Bulletin; or

(2) The manufacturer or producer to whom approval of the ruling was issued files a request to terminate the ruling, in writing, with Customs Headquarters.

§ 191.9 Agency.

(a) *General.* An owner of the identified merchandise, the designated imported merchandise and/or the substituted other merchandise that is used to produce the exported articles may employ another person to do part, or all, of the manufacture or production under 19 U.S.C. 1313(a) or (b) and § 191.2(q) of this subpart. For purposes of this section, such owner is the principal and such other person is the agent. Under 19 U.S.C. 1313(b), the principal shall be treated as the manufacturer or producer of merchandise used in manufacture or production by the agent. The principal must be able to establish by its manufacturing records, the manufacturing records of its agent(s), or the manufacturing records of both (or all) parties, compliance with all requirements of this part (see, in particular, § 191.26 of this part).

(b) *Requirements.* (1) *Contract.* The manufacturer must establish that it is the principal in a contract between it and its agent who actually does the work on either the designated or substituted merchandise, or both, for the principal. The contract must include:

(i) Terms of compensation to show that the relationship is an agency rather than a sale;

(ii) How transfers of merchandise and articles will be recorded by the principal and its agent;

(iii) The work to be performed on the merchandise by the agent for the principal;

(iv) The degree of control that is to be exercised by the principal over the agent's performance of work;

(v) The party who is to bear the risk of loss on the merchandise while it is in the agent's custody; and

(vi) The period that the contract is in effect.

(2) *Ownership of the merchandise by the principal.* The records of the principal and/or the agent must establish that the principal had legal and equitable title to the merchandise before receipt by the agent. The right of the agent to assert a lien on the merchandise for work performed does not derogate the principal's ownership interest under this section.

(3) *Sales prohibited.* The relationship between the principal and agent must not be that of a seller and buyer. If the parties' records show that, with respect to the merchandise that is the subject of the principal-agent contract, the merchandise is sold to the agent by the principal, or the articles manufactured by the agent are sold to the principal by the agent, those records are inadequate to establish existence of a principal-agency relationship under this section.

(c) *Specific manufacturing drawback rulings; general manufacturing drawback rulings.* (1) *Owner.* An owner who intends to operate under the principal-agent procedures of this section must state that intent in any letter of notification of intent to operate under a general manufacturing drawback ruling filed under § 191.7 of this subpart or in any application for a specific manufacturing drawback ruling filed under § 191.8 of this subpart.

(2) *Agent.* Each agent operating under this section must have filed a letter of notification of intent to operate under a general manufacturing drawback ruling (see § 191.7), for an agent, covering the articles manufactured or produced, or have obtained a specific manufacturing drawback ruling (see § 191.8), as appropriate.

(d) *Certificate; Drawback entry; Certificate of manufacture and delivery.* (1) *Contents of certificate; when filing not required.* Principals and agents operating under this section are not required to file a certificate of delivery (for the merchandise transferred from

the principal to the agent) or a certificate of manufacture and delivery (for the articles transferred from the agent to the principal). The principal for whom processing is conducted under this section shall file, with any drawback claim or certificate of manufacture and delivery based on an article manufactured or produced under the principal-agent procedures in this section, a certificate, subject to the recordkeeping requirements of §§ 191.15 of this subpart and 191.26 of this part, certifying that upon request by Customs it can establish the following:

(i) Quantity, kind and quality of merchandise transferred from the principal to the agent;

(ii) Date of transfer of the merchandise from the principal to the agent;

(iii) Date of manufacturing or production operations performed by the agent;

(iv) Total quantity and description of merchandise appearing in or used in manufacturing or production operations performed by the agent;

(v) Total quantity and description of articles produced in manufacturing or production operations performed by the agent;

(vi) Quantity, kind and quality of articles transferred from the agent to the principal; and

(vii) Date of transfer of the articles from the agent to the principal.

(2) *Blanket certificate.* The certificate required under paragraph (d)(1) of this section may be a blanket certificate for a particular kind and quality of merchandise for a stated period.

§ 191.10 Certificate of delivery.

(a) *Purpose; when required.* A party who: imports and pays duty on imported merchandise; receives imported merchandise; in the case of 19 U.S.C. 1313(j)(2), receives imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise; or receives an article manufactured or produced under 19 U.S.C. 1313(a) and/or (b): may transfer such merchandise or manufactured article to another party. The party shall record this transfer by preparing and issuing in favor of such other party a certificate of delivery, certified by the importer or other party through whose possession the merchandise or manufactured article passed (see paragraph (c) of this section). A certificate of delivery issued with respect to the delivered merchandise or article:

(1) Documents the transfer of that merchandise or article;

(2) Identifies such merchandise or article as being that to which a potential right to drawback exists; and

(3) Assigns such right to the transferee (see § 191.82 of this part).

(b) *Required information.* The certificate of delivery must include the following information:

(1) The party to whom the merchandise or articles are delivered;

(2) Date of delivery;

(3) Import entry number;

(4) Quantity delivered;

(5) Total duty paid on, or attributable to, the delivered merchandise;

(6) Date certificate was issued;

(7) Date of importation;

(8) Port where import entry filed;

(9) Person from whom received;

(10) Description of the merchandise delivered;

(11) The HTSUS number with a minimum of 6 digits, for the designated imported merchandise (such HTSUS number shall be from the entry summary and other entry documentation for the merchandise unless the issuer of the certificate of delivery received the merchandise under another certificate of delivery, or a certificate of manufacture and delivery, in which case such HTSUS number shall be from the other certificate); and

(12) If the merchandise transferred is substituted for the designated imported merchandise under 19 U.S.C. 1313(j)(2), the HTSUS or Schedule B commodity number, with a minimum of 6 digits.

(c) *Intermediate transfer.* (1) *Imported merchandise.* If the imported merchandise was not delivered directly from the importer to the manufacturer, or from the importer to the exporter (or destroyer), each intermediate transfer of the imported merchandise shall be documented by means of a certificate of delivery issued in favor of the receiving party, and certified by the person through whose possession the merchandise passed.

(2) *Manufactured article.* If the article manufactured or produced under 19 U.S.C. 1313 (a) or (b) is not delivered directly from the manufacturer to the exporter (or destroyer), each transfer after the transfer from the manufacturer (which shall be documented by means of a certificate of manufacture and delivery) shall be documented by means of a certificate of delivery, issued in favor of the receiving party, and certified by the person through whose possession the article passed.

(d) *Retention period; supporting records.* Records supporting the information required on the certificate(s) of delivery, as listed in paragraph (b) of this section, must be retained by the issuing party for 3 years from the date of payment of the related claim or longer period if required by law (see 19 U.S.C. 1508(c)(3)).

(e) *Retention; submission to Customs.* The certificate of delivery shall be retained by the party to whom the merchandise or article covered by the certificate was delivered. Customs may request the certificate from the claimant for the drawback claim based upon the certificate (see §§ 191.51, 191.52). If the certificate is requested by Customs, but is not provided by the claimant, the part of the drawback claim dependent on that certificate will be denied.

(f) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

§ 191.11 Tradeoff.

(a) *Exchanged merchandise.* To comply with §§ 191.21 and 191.22 of this part, the use of domestic merchandise taken in exchange for imported merchandise of the same kind and quality (as defined in § 191.2(s) of this part for purposes of 19 U.S.C. 1313(b)) shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the transfer of the imported merchandise. This provision shall be known as tradeoff and is authorized by § 313(k) of the Act, as amended (19 U.S.C. 1313(k)).

(b) *Requirements.* Tradeoff must occur between two separate legal entities but it is not necessary that the entity exchanging the imported merchandise be the importer thereof. In addition, tradeoff must consist of an exchange of same kind and quality merchandise and nothing else (the exchange may be of different quantities of same kind and quality merchandise, but may not involve the payment or receipt of cash payments or other than same kind and quality merchandise). If the quantities of merchandise exchanged are different, the lesser quantity shall be the quantity available for drawback. If the quantity of domestic merchandise received is greater than the quantity of imported merchandise exchanged, the merchandise identified for drawback shall be the portion of the domestic merchandise equal to the quantity of imported merchandise which is first received.

(c) *Application.* Each would-be user of tradeoff, except those operating under an approved specific manufacturing drawback ruling covering substitution, must apply to the Duty and Refund

Determination Branch, Office of Regulations and Rulings, Customs Headquarters, for a determination of whether the imported and domestic merchandise are of the same kind and quality. For those users manufacturing under substitution drawback, this request should be contained in the application for a specific manufacturing drawback ruling (§ 191.8). For those users manufacturing under the request should be made by a separate letter.

§ 191.12 Claim filed under incorrect provision.

A drawback claim filed pursuant to any provision of a general manufacturing drawback ruling (§ 191.7), § 313 of the Act, as amended (19 U.S.C. 1313) may be deemed filed pursuant to any other provision thereof should the drawback office determine that drawback is not allowable under the provision as originally filed, but that it is allowable under such other provision. To be allowable under such other provision, the claim must meet each of the requirements of such provision. The claimant may raise alternative provisions prior to liquidation or by protest.

§ 191.13 Packaging materials.

Drawback of duties is provided for in § 313(q) of the Act, as amended (19 U.S.C. 1313(q)), on imported packaging material when used to package or repackage merchandise or articles exported or destroyed pursuant to § 313(a), (b), (c), or (j) of the Act, as amended (19 U.S.C. 1313(a), (b), (c), or (j)). Drawback is payable on the packaging material pursuant to the particular drawback provision to which the packaged goods themselves are subject. The drawback will be based on the duty, tax or fee paid on the importation of the packaging material. The packaging material must be separately identified on the claim, and all other information and documents required for the particular drawback provision under which the claim is made shall be provided for the packaging material.

§ 191.14 Identification of merchandise or articles by accounting method.

(a) *General.* This section provides for the identification of merchandise or articles for drawback purposes by the use of accounting methods. This section applies to identification of merchandise or articles in inventory or storage, as well as identification of merchandise used in manufacture or production (see § 191.2(h) of this subpart). This section is not applicable to situations in which the drawback law authorizes substitution (substitution is allowed in specified situations under 19 U.S.C. 1313(b), 1313(j)(2), 1313(k), and 1313(p); this section does apply to situations in these subsections in which substitution is not allowed, as well as to the subsections of the drawback law under which no substitution is allowed). When substitution is authorized, merchandise or articles may be substituted without reference to this section, under the criteria and conditions specifically authorized in the statutory and regulatory provisions providing for the substitution.

(b) *Conditions and criteria for identification by accounting method.* Manufacturers, producers, claimants, or other appropriate persons may identify for drawback purposes lots of merchandise or articles under this section, subject to each of the following conditions and criteria:

(1) The lots of merchandise or articles to be so identified must be fungible (see § 191.2(o) of this part);

(2) The person using the identification method must be able to establish that inventory records (for example, material control records), prepared and used in the ordinary course of business, account for the lots of merchandise or articles to be identified as being received into and withdrawn from the same inventory. Even if merchandise or articles are received or withdrawn at different geographical locations, if such inventory records treat receipts or withdrawals as being from the same inventory, those inventory records may be used to identify the merchandise or articles under this section, subject to the conditions of this section. If any such inventory records (that is, inventory records prepared and used in the ordinary course of business) treat receipts and withdrawals as being from different inventories, those inventory records must be used and receipts into or withdrawals from the different inventories may not be accounted for together. If units of merchandise or articles can be specifically identified (for example, by serial number), the merchandise or articles must be specifically identified and may not be identified by accounting method, unless it is established that inventory records, prepared and used in the ordinary course of business, treat the merchandise or articles to be identified as being received into and withdrawn from the same inventory (subject to the above conditions);

(3) Unless otherwise provided in this section or specifically approved by Customs (by a binding ruling under part 177 of this chapter), all receipts (or inputs) into and all withdrawals from the inventory must be recorded in the accounting record;

(4) The records which support any identification method under this section are subject to verification by Customs (see § 191.61 of this part). If Customs requests such verification, the person using the identification method must be able to demonstrate how, under generally accepted accounting procedures, the records which support the identification method used account for all merchandise or articles in, and all receipts into and withdrawals from, the inventory, and the drawback per unit for each receipt and withdrawal; and

(5) Any accounting method which is used by a person for drawback purposes under this section must be used without variation with other methods for a period of at least one year, unless approval is given by Customs for a shorter period.

(c) *Approved accounting methods.* The following accounting methods are approved for use in the identification of merchandise or articles for drawback purposes under this section.

(1) *First-in, first-out (FIFO).* (i) *General.* The FIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the first merchandise or articles received into the inventory. Under this method, withdrawals are from the oldest (first-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example.* If the beginning inventory is zero, 100 units with $1 drawback attributable per unit are received in inventory on the 2nd of the month, 50 units with no drawback attributable per unit are received into inventory on the 5th of the month, 75 units are withdrawn for domestic (non-export) shipment on the 10th of the month, 75 units with $2 drawback attributable per unit are received in inventory on the 15th of the month, 100 units are withdrawn for export on the 20th of the month, and no other receipts or withdrawals occurred in the month, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $75 (25 units from the receipt on the 2nd with $1 drawback attributable per unit, 50 units from the receipt on the 5th with no drawback attributable per unit, and 25 units from the receipt on the 15th with $2 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50

units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units ($1 drawback/unit) results in a balance of 75 units (25 with $1 drawback/unit and 50 with $0 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (25 with $1 drawback/unit, 50 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (25 with $1 drawback/unit, 50 with $0 drawback/unit, and 25 with $2 drawback unit) results in a balance of 50 units (all 50 with $2 drawback/unit).

(2) *Last-in, first out (LIFO).* (i) *General.* The LIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the last merchandise or articles received into the inventory. Under this method, withdrawals are from the newest (last-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $175 (75 units from the receipt on the 15th with $2 drawback attributable per unit and 25 units from the receipt on the 2nd with $1 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $0 drawback/unit and 25 with $1 drawback/unit) results in a balance of 75 units (all with $1 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (75 with $1 drawback/unit and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (75 with $2 drawback/unit and 25 with $1 drawback/unit) results in a balance of 50 units (all 50 with $1 drawback/unit).

(3) *Low-to-high.* (i) *General.* The low-to-high method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles in inventory. Merchandise or articles with no drawback attributable to them (for example, domestic merchandise or duty-free merchandise) must be accounted for and are treated as having the lowest drawback attributable to them. Under this method, withdrawals are from the merchandise or articles with the least amount of drawback attributable to them, then those with the next higher amount, and so forth. If the same amount of drawback is attributable to more than one lot of merchandise or articles, withdrawals are from the oldest (first-in) merchandise or articles among those lots with the same amount of drawback attributable. Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years (more than 3 years for unused merchandise drawback) before the claimed export, no drawback could be granted).

(ii) *Ordinary.* (A) *Method.* Under the ordinary low-to-high method, all receipts into and all withdrawals from the inventory are recorded in the accounting record and accounted for so that each withdrawal, whether for export or domestic shipment, is identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles available in the inventory.

(B) *Example.* In this example, the beginning inventory is zero, and receipts into and withdrawals from the inventory are as follows:

Date	Receipt ($ per unit)	Withdrawals
Jan. 2	100 (zero).	
Jan. 5	50 ($1.00).	
Jan. 15	.....	50 (export).
Jan. 20	50 ($1.01).	
Jan. 25	50 ($1.02).	
Jan. 28	.....	50 (domestic).
Jan. 31	50 ($1.03).	
Feb. 5	.....	100 (export).
Feb. 10	50 ($.95).	
Feb. 15	.....	50 (export).
Feb. 20	50 (zero).	
Feb. 23	.....	50 (domestic).
Feb. 25	50 ($1.05).	
Feb. 28	.....	100 (export).
Mar. 5	50 ($1.06).	
Mar. 10	50 ($.85).	
Mar. 15	.....	50 (export).
Mar. 21	.....	50 (domestic).
Mar. 20	50 ($1.08).	
Mar. 25	50 ($.90).	
Mar. 31	.....	100 (export).

The drawback attributable to the January 15 withdrawal for export is zero (the available receipt with the lowest drawback amount per unit is the January 2 receipt), the drawback attributable to the January 28 withdrawal for domestic shipment (no drawback) is zero (the remainder of the January 2 receipt), the drawback attributable to the February 5 withdrawal for export is $100.50 (the January 5 and January 20 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 23 withdrawal for domestic shipment (no drawback) is zero (the February 20 receipt), the drawback attributable to the February 28 withdrawal for export is $102.50 (the January 25 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), the drawback attributable to the March 21 withdrawal for domestic shipment (no drawback) is $52.50 (the February 25 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). Remaining in inventory is the March 20 receipt of 50 units ($1.08 drawback/unit). Total drawback attributable to withdrawals for export in this example would be $381.00.

(iii) *Low-to-high method with established average inventory turn-over period.* (A) *Method.* Under the low-to-high method with established average inventory turn-over period, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into the inventory in the established average inventory turn-over period preceding the withdrawal.

(B) *Accounting for withdrawals (for domestic shipments and for export).* Under this method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Establishment of inventory turn-over period.* For purposes of this section, average inventory turn-over period is based on the rate of withdrawal from inventory and represents the time in which all of the merchandise or articles in the inventory at a given time must have been withdrawn. To establish an average of this time, at least 1 year, or three (3) turn-over periods (if inventory turns over less than 3 times per year), must be averaged. The inventory turn-over

period must be that for the merchandise or articles to be identified, except that if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the longest average turn-over period established under this section may be used (instead of using a different inventory turn-over period for each kind of merchandise or article).

(D) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals, and with an established average inventory turn-over period of 30 days), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the preceding 30 days with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $101.50 (the January 20 and January 25 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $51.50 (the February 20 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). No drawback may be claimed on the basis of the January 5 receipt or the February 25 receipt because in the case of each, there were insufficient withdrawals for export within the established average inventory turn-over period; the 50 units remaining from the January 2 receipt after the January 15 withdrawal are not identified for a withdrawal for export because there is no other withdrawal for export (other than the January 15 withdrawal) within the established average inventory turn-over period. Total drawback attributable to withdrawals for export in this example would be $331.00.

(iv) *Low-to-high blanket method.* (A) *Method.* Under the low-to-high blanket method, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into inventory in the period preceding the withdrawal equal to the statutory period for export under the kind of drawback involved (*e.g.*, 180 days under 19 U.S.C. 1313(p), 3 years under 19 U.S.C. 1313(c) and 1313(j), and 5 years otherwise under 19 U.S.C. 1313(i)). Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years (more than 3 years for 19 U.S.C. 1313(j); more than 180 days after the date of import or after the close of the manufacturing period for 19 U.S.C. 1313(p)) before the claimed export, no drawback could be granted).

(B) *Accounting for withdrawals (for domestic shipments and for export).* Under this method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the inventory the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $50.00 (the remainder of the January 2 receipt and the January 5 receipt), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $50.50 (the February 20 and January 20 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $96.00 (the March 25 and January 25 receipts). Receipts not attributed to withdrawals for export are the January 31 (50 units at $1.03), February 25 (50 units at $1.05), and March 20 (50 units at $1.08) receipts. Total drawback attributable to withdrawals for export in this example would be $276.50.

(4) *Average.* (i) *General.* The average method is the method by which fungible merchandise or articles are identified on the basis of the calculation by recordkeeping of the amount of drawback that may be attributed to each unit of merchandise or articles in the inventory. In this method, the ratio of:

(A) The total units of a particular receipt of the fungible merchandise in the inventory at the time of a withdrawal to;

(B) The total units of all receipts of the fungible merchandise (including each receipt into inventory) at the time of the withdrawal;

(C) Is applied to the withdrawal, so that the withdrawal consists of a proportionate quantity of units from each particular receipt and each receipt is correspondingly decreased. Withdrawals and corresponding decreases to receipts are rounded to the nearest whole number.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $133 (50 units from the receipt on the 15th with $2 drawback attributable per unit, 33 units from the receipt on the 2nd with $1 drawback attributable per unit, and 17 units from the receipt on the 5th with $0 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $1 drawback/unit (applying the ratio of 100 units from the receipt on the 2nd to the total of 150 units at the time of withdrawal) and 25 with $0 drawback/unit (applying the ratio of 50 units from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 75 units (with 50 with $1 drawback/unit and 25 with $0 drawback/unit, on the basis of the same ratios); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (50 with $1 drawback/unit, 25 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (50 with $2 drawback/unit (applying the ratio of the 75 units from the receipt on the 15th to the total of 150 units at the time of withdrawal), 33 with $1 drawback/unit (applying the ratio of the 50 units remaining from the receipt on the 2nd to the total of 150 units at the time of withdrawal, and 17 with $0 drawback/unit (applying the ratio of the 25 units remaining from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 50 units (25 with $2 drawback/unit, 17 with $1 drawback/unit, and 8 with $0 drawback/unit, on the basis of the same ratios).

(5) *Inventory turn-over for limited purposes.* A properly established average inventory turn-over period, as provided for in paragraph (c)(3)(iii)(C) of this section, may be used to determine:

(i) The fact and date(s) of use in manufacture or production of the imported designated merchandise and other (substituted) merchandise (see 19 U.S.C. 1313(b)); or

(ii) The fact and date(s) of manufacture or production of the finished articles (see 19 U.S.C. 1313(a) and (b)).

(d) *Approval of other accounting methods.* (1) Persons proposing to use an accounting method for identification of merchandise or articles for drawback purposes which has not been previously approved for such use (see paragraph (c) of this section), or which includes modifications from the methods listed in paragraph (c) of this section, may seek approval by Customs of the proposed accounting method under the provisions for obtaining an administrative ruling (see part 177 of this chapter). The conditions applied and the criteria used by Customs in approving such an alternative accounting method, or a modification of one of the approved accounting methods, will be the criteria in paragraph (b) of this section, as well as those in paragraph (d)(2) of this section.

(2) In order for a proposed accounting method to be approved by Customs for purposes of this section, it shall meet the following criteria:

(i) For purposes of calculations of drawback, the proposed accounting method must be either revenue neutral or favorable to the Government; and

(ii) The proposed accounting method should be:

(A) Generally consistent with commercial accounting procedures, as applicable for purposes of drawback;

(B) Consistent with inventory or material control records used in the ordinary course of business by the person proposing the method; and

(C) Easily administered by both Customs and the person proposing the method.

§ 191.15 Recordkeeping.

Pursuant to 19 U.S.C. 1508(c)(3), all records which pertain to the filing of a drawback claim or to the information contained in the records required by 19 U.S.C. 1313 in connection with the filing of a drawback claim shall be retained for 3 years after payment of such claims or longer period if required by law (under 19 U.S.C. 1508, the same records may be subject to a different period for different purposes).

Subpart B—Manufacturing Drawback

§ 191.21 Direct identification drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under Customs supervision, of articles which are not used in the United States prior to their exportation or destruction, and which are manufactured or produced in the United States wholly or in part with the use of particular imported, duty-paid merchandise and/or drawback product(s). Where two or more products result, drawback shall be distributed among the products in accordance with their relative value (see § 191.2(u)) at the time of separation. Merchandise may be identified for drawback purposes under 19 U.S.C. 1313(a) in the manner provided for and prescribed in § 191.14 of this part.

§ 191.22 Substitution drawback.

(a) *General.* If imported, duty-paid, merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, then upon the exportation, or destruction under Customs supervision, of any such articles, without their having been used in the United States prior to such exportation or destruction, drawback is provided for in § 313(b) of the Act, as amended (19 U.S.C. 1313(b)), even though none of the imported, duty-paid merchandise may have been used in the manufacture or production of the exported or destroyed articles. The amount of drawback allowable cannot exceed that which would have been allowable had the merchandise used therein been the imported, duty-paid merchandise.

(b) *Use by same manufacturer or producer at different factory.* Duty-paid merchandise or drawback products used at one factory of a manufacturer or producer within 3 years after the date on which the material was received by the manufacturer or producer may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other factories of the same manufacturer or producer.

(c) *Designation.* A manufacturer or producer may designate any eligible imported merchandise or drawback product which it has used in manufacture or production.

(d) *Designation by successor; 19 U.S.C. 1313(s). (1) General rule.* Upon compliance with the requirements in this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (d)(2) of this section may designate merchandise or drawback product used by a predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the successor after the date of succession.

(2) *Drawback successor.* A ''drawback successor'' is a manufacturer or producer to whom another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personalty, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence.* (i) *Records of predecessor.* The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the merchandise or drawback product.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify in an attachment to the claim, that the predecessor has not designated and will not designate, nor enable any other person to designate, such merchandise or product as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs.* The written agreement, merger, or corporate resolution, provided for in paragraph (d)(2) of this section, and the records and evidence provided for in paragraph (d)(3) (i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

(e) *Multiple products.* (1) *General.* Where two or more products are produced concurrently in a substitution manufacturing operation, drawback

shall be distributed to each product in accordance with its relative value (see § 191.2(u)) at the time of separation.

(2) *Claims covering a manufacturing period.* Where the claim covers a manufacturing period rather than a manufacturing lot, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (see § 191.2(u) of this part). Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(3) *Recordkeeping.* Records shall be maintained showing the relative value of each product at the time of separation.

§ 191.23 Methods of claiming drawback.

(a) *Used in.* Drawback may be paid based on the amount of the imported or substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when byproducts also necessarily and concurrently result from the manufacturing process, and there is no valuable waste (see paragraph (c) of this section).

(b) *Appearing in.* Drawback is allowable under this method based only on the amount of imported or substituted merchandise that appears in (is contained in) the exported articles. This method may not be used if there are byproducts also necessarily and concurrently resulting from the manufacturing process.

(c) *Used in less valuable waste.* Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when byproducts also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(d) *Abstract or schedule.* A drawback claimant may use either the abstract or schedule method to show the quantity of material used or appearing in the exported or destroyed article. An abstract is the summary of records which shows the total quantity used in or appearing in all articles produced during the period covered by the abstract. A schedule shows the quantity of material used in producing, or appearing in, each unit of product. Manufacturers or producers submitting letters of notification of intent to operate under a general manufacturing drawback ruling (see § 191.7) and applicants for approval of specific manufacturing drawback rulings (see § 191.8) shall state whether the abstract or schedule method is used; if no such statement is made, drawback claims must be based upon the abstract method.

(e) *Recordkeeping.* (1) *Valuable waste.* When the waste has a value and the drawback claim is not limited to the quantity of imported or substituted merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback, the manufacturer or producer shall keep records to show the market value of the merchandise or drawback products used to manufacture or produce the exported or destroyed articles, as well as the market value of the resulting waste, under the used in less valuable waste method (see § 191.2(u) of this part).

(2) *If claim for waste is waived.* If claim for waste is waived, only the ''appearing in'' basis may be used (see paragraph (b) of this section). Waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback.

§ 191.24 Certificate of manufacture and delivery.

(a) *When required.* When an article or drawback product manufactured or produced under a general manufacturing drawback ruling or a specific manufacturing drawback ruling is transferred from the manufacturer or producer to another party, a certificate of manufacture and delivery shall be prepared and certified by the manufacturer.

(b) *Information required on certificate.* The following information shall be required on the certificate of manufacture and delivery executed by the manufacturer or producer:

(1) The person to whom the article or drawback product is delivered;

(2) If the article or drawback product was manufactured or produced under a general manufacturing drawback ruling, the unique computer-generated number assigned to the letter of acknowledgment for that ruling, and if the article or drawback product was manufactured or produced under a specific manufacturing drawback ruling, either the unique computer number or the T.D. number for that ruling;

(3) The quantity, kind and quality of imported, duty-paid merchandise or drawback product designated;

(4) Import entry numbers, HTSUS number for the imported merchandise to at least the 6th digit (such HTSUS number shall be from the entry summary and other entry documentation for the imported, duty-paid merchandise unless the issuer of the certificate of manufacture and delivery received the merchandise under another certificate (either of delivery or of manufacture and delivery), in which case such HTSUS number shall be from the other certificate), and applicable duty amounts;

(5) Date received at factory;

(6) Date used in manufacture;

(7) Value at factory, if applicable;

(8) Quantity of waste, if any, if applicable;

(9) Market value of any waste, if applicable;

(10) Total quantity and description of merchandise appearing in or used;

(11) Total quantity and description of articles produced;

(12) Date of manufacture or production of the articles;

(13) The quantity of articles transferred; and

(14) The person from whom the article or drawback product is delivered.

(c) *Filing of certificate.* The certificate of manufacture and delivery shall be filed with the drawback claim it supports (unless previously filed) (see § 191.51 of this part).

(d) *Effect of certificate.* A certificate of manufacture and delivery documents the delivery of articles from the manufacturer or producer to another party, identifies such articles as being those to which a potential right to drawback exists, and assigns such potential rights to the transferee (see also § 191.82 of this part).

§ 191.25 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain manufacturing drawback by complying with the procedures set forth in § 191.71 of this part relating to destruction.

§ 191.26 Recordkeeping for manufacturing drawback.

(a) *Direct identification manufacturing.* (1) *Records required.* Each manufacturer or producer under 19 U.S.C. 1313(a) shall keep records to allow the verifying Customs official to trace all articles manufactured or produced for exportation or destruction with drawback, from importation, through production, to exportation or destruction. To this end, these records shall specifically establish:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in or appearing

in (see § 191.23) the articles manufactured or produced;

(iii) The quantity, if any, of the nondrawback merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback product used in the manufacture or production of the exported or destroyed articles or appearing in them;

(iv) The quantity and description of the articles manufactured or produced;

(v) The quantity of waste incurred, if applicable; and

(vi) That the finished articles on which drawback is claimed were exported or destroyed within 5 years after the importation of the duty-paid merchandise, without having been used in the United States prior to such exportation or destruction. (If the completed articles were commingled after manufacture, their identity may be maintained in the manner prescribed in § 191.14 of this part.)

(2) *Accounting.* The merchandise and articles to be exported or destroyed shall be accounted for in a manner which will enable the manufacturer, producer, or claimant:

(i) To determine, and the Customs official to verify, the applicable import entry, certificate of delivery, and/or certificate of manufacture and delivery associated with the claim; and

(ii) To identify with respect to that import entry, certificate of delivery, and/or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in manufacture or production.

(b) *Substitution manufacturing.* The records of the manufacturer or producer of articles manufactured or produced in accordance with 19 U.S.C. 1313(b) shall establish the facts in paragraph (a)(1)(i), (iv) through (vi) of this section, and:

(1) The quantity, identity, and specifications of the merchandise designated (imported duty-paid, or drawback product);

(2) The quantity, identity, and specifications of merchandise of the same kind and quality as the designated merchandise before its use to manufacture or produce (or appearing in) the exported or destroyed articles; and

(3) That, within 3 years after receiving the designated merchandise at its plant, the manufacturer or producer used it in manufacturing or production and that during the same 3-year period it manufactured or produced the exported or destroyed articles.

(c) *Valuable waste records.* When waste has a value and the manufacturer, producer, or claimant, has not limited the claims based on the quantity of imported or substituted merchandise appearing in the articles exported or destroyed, the manufacturer or producer shall keep records to show the market value of the merchandise used to manufacture or produce the exported or destroyed article, as well as the quantity and market value of the waste incurred (see § 191.2(u) of this part). In such records, the quantity of merchandise identified or designated for drawback, under 19 U.S.C. 1313(a) or 1313(b), respectively, shall be based on the quantity of merchandise actually used to manufacture or produce the exported or destroyed articles. The waste replacement reduction will be determined by reducing from the quantity of merchandise actually used the amount of merchandise which the value of the waste would replace.

(d) *Purchase of manufactured articles for exportation.* Where the claimant purchases articles from the manufacturer and exports them, the claimant shall file the related certificate of manufacture and delivery as part of the claim (see § 191.51(a)(1) of this part).

(e) *Multiple claimants.* (1) *General.* Multiple claimants may file for drawback with respect to the same export (for example, if an automobile is exported, where different parts of the automobile have been produced by different manufacturers under drawback conditions and the exporter waives the right to claim drawback and assigns such right to the manufacturers under § 191.82 of this part).

(2) *Procedures.* (i) *Submission of letter.* Each drawback claimant shall file a separate letter, as part of the claim, describing the component article on the export bill of lading to which each claim will relate. Each letter shall show the name of the claimant and bear a statement that the claim shall be limited to its respective component article. The exporter shall endorse the letters, as required, to show the respective interests of the claimants.

(ii) *Blanket Waivers and Assignments of Drawback Rights.* Exporters may waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period to a drawback claimant.

(iii) *Use of export summary procedure.* If the parties elect to use the export summary procedure (§ 191.73 of this part) each drawback claimant shall complete a chronological summary of exports for the respective component product to which each claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant(s) and the component product for which each will independently claim drawback, if known at the time the drawback claim is filed. The exporter shall endorse the summaries, as required, to show the respective interests of the claimants. Each claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback.

(f) *Retention of records.* Pursuant to 19 U.S.C. 1508(c)(3), all records required to be kept by the manufacturer, producer, or claimant with respect to drawback claims, and records kept by others to complement the records of the manufacturer, producer, or claimant with respect to drawback claims shall be retained for 3 years after the date of payment of the related claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

§ 191.27 Time limitations.

(a) *Direct identification manufacturing.* Drawback shall be allowed on imported merchandise used to manufacture or produce articles that are exported or destroyed under Customs supervision within 5 years after importation of the merchandise identified to support the claim.

(b) *Substitution manufacturing.* Drawback shall be allowed on the imported merchandise if the following conditions are met:

(1) The designated merchandise is used in manufacture or production within 3 years after receipt by the manufacturer or producer at its factory;

(2) Within the 3-year period described in paragraph (b)(1) of this section, the exported or destroyed articles, or drawback products, were manufactured or produced; and

(3) The completed articles must be exported or destroyed under Customs supervision within 5 years of the date of importation of the designated merchandise, or within 5 years of the earliest date of importation associated with a drawback product.

(c) *Drawback claims filed before specific or general manufacturing drawback ruling approved or acknowledged.* Drawback claims may be filed before the letter of notification of intent to operate under a general manufacturing drawback ruling covering the claims is acknowledged (§ 191.7), or before the specific manufacturing drawback ruling covering the claims is approved (§ 191.8), but no drawback shall be paid until such acknowledgement or approval, as appropriate.